

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On its Own Motion	)	
	)	
Investigation concerning Illinois Bell	)	Docket No. 01-0662
Telephone Company's compliance	)	
with Section 271 of the	)	
Telecommunications Act of 1996	)	

**MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

**AND TDS METROCOM, LLC'S**

**BRIEF ON EXCEPTIONS**

**TO THE ADMINISTRATIVE LAW JUDGE'S**

**PROPOSED FINAL ORDER ON INVESTIGATION**

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## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION AND SUMMARY OF POSITION</b>	<b>1</b>
<b>II.</b>	<b>EXCEPTIONS TO THE PROPOSED ORDER’S CONCLUSIONS ON “BILLING” (SECTION III.B.9.h, PARAGRAPHS 1320-1333)</b>	<b>4</b>
<b>A.</b>	<b>The Importance of Accurate and Timely Wholesale Billing to Section 271 Checklist Compliance</b>	<b>4</b>
<b>B.</b>	<b>The Proposed Order’s Conclusion on Wholesale Billing</b>	<b>6</b>
<b>C.</b>	<b>The Phase 2 Record Demonstrates that SBC Illinois’ Wholesale Bills Are Replete With Errors That Apparently Result from Myriad Problems in SBC Systems Affecting Billing</b>	<b>7</b>
<b>D.</b>	<b>The Proposed Order Erroneously Discounts the SBC Wholesale Billing Problems Identified by McLeodUSA, TDS Metrocom and Other CLECs</b>	<b>12</b>
<b>E.</b>	<b>The Fact That SBC Illinois Passed Certain BearingPoint Tests of Billing-Related Performance Measures Does Not Demonstrate That SBC’s Wholesale Billing is Adequate</b>	<b>16</b>
<b>F.</b>	<b>SBC Illinois Should Be Required to Establish and Implement a Comprehensive and Transparent Wholesale Billing System Rehabilitation Plan as a Condition to Receiving a Positive Section 271 Recommendation from this Commission</b>	<b>20</b>
<b>G.</b>	<b>Even if the Commission Adopts the Proposed Order’s Overall Conclusion on Wholesale Billing, It Should Modify Paragraph 1332 to Allow <u>All</u> CLECs to Submit Proposals to Expand the Scope or Content of the Billing Auditability Plan</b>	<b>23</b>
<b>H.</b>	<b>Proposed Replacement Language for the Proposed Order’s Conclusions on “Billing”</b>	<b>24</b>
<b>1.</b>	<b>Proposed Replacement Language</b>	<b>24</b>
<b>2.</b>	<b>Alternative Replacement Language for Paragraph 1332 if the Proposed Order’s Principal Conclusions on “Billing” Are Not Changed</b>	<b>28</b>
<b>III.</b>	<b>EXCEPTIONS TO THE PROPOSED ORDER’S CONCLUSIONS ON “RELIABILITY OF SBC ILLINOIS’ COMMERCIAL PERFORMANCE DATA” (SECTION III.O.6, PARAGRAPHS 2901 – 2950)</b>	<b>29</b>

<b>A.</b>	<b>The Proposed Order Erroneously Accepts the Ernst &amp; Young Review as an Acceptable Substitute for Successful Completion By SBC Illinois of the Performance Metrics Review Being Conducted by this Commission’s Independent Third-Party Auditor, BearingPoint</b>	<b>30</b>
<b>B.</b>	<b>The BearingPoint Review Has Not Established SBC Illinois’ Data Integrity nor the Reliability of its Performance Measurement Calculation and Reporting</b>	<b>34</b>
1.	At This Time, SBC Illinois Stands Short of Demonstrating the Accuracy and Reliability of its Performance Metrics through Successful Completion of the BearingPoint Performance Metrics Review	34
2.	Staff Has Concluded That the Reliability of SBC Illinois’ Performance Measurements Has Not Been Established and That a Positive Section 271 Recommendation Is Not Warranted Until the BearingPoint Performance Metrics Review is Substantially Complete	39
3.	This Commission Should Finish What It Started: SBC Illinois Should Not Receive a Positive Section 271 Recommendation Until it Has Successfully Completed the BearingPoint Performance Metrics Review	43
<b>C.</b>	<b>The Review of SBC Illinois’ Performance Metrics Conducted by E&amp;Y Is Not an Acceptable Substitute for Successful Completion of the BearingPoint Performance Metrics Validation; Moreover, the E&amp;Y Review Also Shows Problems Remain with SBC’s Data Integrity and Performance Metrics Calculation and Reporting</b>	<b>45</b>
1.	The E&Y Review Was Not Conducted in an Open, Public Process, Was Subject to Scope Limitations, and Cannot Be Accepted as a Substitute for Successful Completion of the BearingPoint Performance Metrics Validation in Order to Support a Positive Section 271 Recommendation from this Commission	45
2.	The E&Y Review Disclosed Serious Problems with SBC Illinois’ Data Integrity and Performance Measurements Calculation and Reporting	52

3.	<b>If the Commission Does Not Believe the CLECs, It Can Take Staff’s Word for it – the E&amp;Y Report Constitutes Strong Evidence that SBC Illinois’ Performance Measurement Data is Unreliable</b>	<b>55</b>
D.	<b>Conclusion on the Reliability and Accuracy of SBC Illinois’ Performance Measurements Data and Reporting</b>	<b>60</b>
E.	<b>Proposed Replacement Language for the Proposed Order’s Conclusions on “Reliability of SBC Illinois’ Commercial Performance Data”</b>	<b>61</b>
IV.	<b>CONCLUSION</b>	<b>66</b>

## **I. INTRODUCTION AND SUMMARY OF EXCEPTIONS**

McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) and TDS Metrocom, LLC (“TDS Metrocom”) submit this Brief on Exceptions to the Administrative Law Judge’s Proposed Final Order on Investigation (“PO”). McLeodUSA and TDS Metrocom take exception to two sets of conclusions in the PO: (1) the PO’s conclusions concerning “Billing” (paragraph (“par.”) 1320-1333), and (2) the PO’s conclusions concerning “Reliability of SBC Illinois’ Commercial Performance Data” (par. 2901-2950). The Commission should reject the conclusions in the PO on these two topics and should instead conclude, as the Phase 2 record demonstrates:

- ? Illinois Bell Telephone Company (“SBC” or “SBC Illinois”) does not satisfy Section 271(c)(2)(B) competitive checklist item 2 because it has not demonstrated the ability to consistently and reliably produce accurate and timely wholesale bills to its competitive local exchange carrier (“CLEC”) customers. The record shows that SBC Illinois frequently issues inaccurate wholesale bills to CLECs, thereby imposing a significant resource burden on CLECs and impairing their ability to compete effectively with SBC. The Commission should require SBC Illinois to establish and implement a comprehensive wholesale billing system rehabilitation plan as a condition to receiving a positive Section 271 recommendation by this Commission to the Federal Communications Commission (“FCC”).
- ? The record in this proceeding does not establish that SBC maintains adequate data integrity and provides reliable and accurate wholesale performance measurement reporting. Reliable and accurate collection and storage of performance data and calculation and reporting of performance measurements is critical to the ability of the Commission and of CLECs to evaluate, on an ongoing basis, the quality of SBC’s wholesale service quality performance. For example, among other things, the SBC performance measurement plan that will be approved by this Commission for Section 271 purposes will only be as accurate, reliable and capable of achieving its intended purposes as are the performance metrics results that are calculated and reported by SBC. SBC should not receive a favorable Section 271 recommendation from this Commission to the FCC until SBC successfully completes third-party verification and validation of its performance metrics systems and processes by this Commission’s

independent third-party auditor, BearingPoint LLP (“Bearing Point” or “BP”).

McLeodUSA and TDS Metrocom are CLECs that provide local exchange telecommunications services to retail customers in Illinois using both their own facilities and wholesale services and unbundled network elements (“UNE”) purchased from SBC Illinois. McLeodUSA and TDS Metrocom do not consider themselves competitors of SBC in the long distance market (once SBC is allowed to enter it), and they have no competitive incentive to see SBC Illinois excluded from the interLATA long distance markets indefinitely. In Phase 2 of this docket, McLeodUSA and TDS Metrocom have concentrated their efforts on specific issues that impact their ability to compete with SBC in the local service markets and the conditions needed to foster competition in those markets on a sustained basis: the provision by SBC to CLECs of nondiscriminatory access to effective, fully-functioning operations support systems (“OSS”); accurate and reliable calculation and reporting of performance measurement data by SBC; and (as a specific case of dysfunctional OSS performance), SBC’s inability to consistently produce accurate and timely wholesale bills.

The Commission should be aware that on April 16, 2003 – apparently just in time to avoid impending rejection – SBC Illinois’ Michigan affiliate withdrew its pending Section 271 application at the FCC. (See SBC letter to the FCC, April 16, 2003, in WC Docket 03-16 (Attachment 1 to this brief)). This withdrawal has important consequences with respect to the Phase 2 issues raised by McLeodUSA and TDS Metrocom. First, with respect to wholesale billing, FCC Chairman Powell, in his press release announcing that SBC Michigan had withdrawn its Section 271 application, stated:

In my view, SBC's application generally met the requirements of section 271. Ultimately, the outstanding issues that prevented approval were very narrow, but nonetheless important. **Perhaps the most troubling of these issues relates to billing. Despite extensive examination of the record supporting these applications, questions remain regarding whether SBC is currently providing wholesale billing functions for competitive LECs in a manner that meets the requirements of our existing precedent.** (Statement of FCC Chairman Michael Powell on Withdrawal of SBC's 271 Application for Michigan, April 16, 2003 (emphasis added), attached to this Brief as Attachment 2)

Chairman Powell's assessment of the state of SBC's wholesale billing functions is in sharp contrast to the Proposed Order's conclusion that the SBC wholesale billing problems detailed in this record do not present any Section 271 compliance problems.<sup>1</sup> (PO, par. 1326)

Second, with respect to McLeodUSA and TDS Metrocom's position that this Commission should not issue a positive Section 271 recommendation for SBC Illinois until SBC has successfully completed the BearingPoint performance metrics validation, the Commission should remember that the sole premise originally advanced by SBC Illinois for an expedited Phase 2 schedule in this case was so that SBC Illinois could be in a position to file its FCC application shortly after its Michigan affiliate received Section 271 approval from the FCC on or about April 16, 2003. However, SBC Midwest's lead Section 271 case, the Michigan case, has now been withdrawn at the FCC; and even if the Michigan application were refiled at the FCC within the next few weeks, it would be subject to a new 90-day schedule at the FCC. Thus, SBC cannot be expected to receive Section 271 approval from the FCC for Michigan until late July 2003, at the earliest. Further, recent information in this proceeding is that the Bearing Point

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<sup>1</sup>As detailed later in this brief, the five SBC Midwest companies, including SBC Illinois and SBC Michigan, use the same wholesale billing systems and processes and, for the most part, the same OSS.

performance metrics review can be completed by the end of July as well. (Staff Ex. 43.0, par. 34) Thus, there is no longer any reason for this Commission not to wait until SBC Illinois successfully completes the Bearing Point OSS and performance metrics testing before issuing its final order in this docket.

McLeodUSA and TDS Metrocom emphasize to the Commission that the “carrot” of Section 271 authority (and of a positive Section 271 recommendation by this Commission to the FCC) is the strongest tool this Commission has to ensure that SBC will address and fix, on a permanent basis, the OSS, performance metrics and other problems that have been identified during this investigation by Commission Staff, by CLECs, by the Commission-appointed auditor, BearingPoint, and even by the auditor retained by SBC, Ernst & Young. If SBC is given a positive recommendation for Section 271 approval by this Commission, and receives Section 271 authority, before these issues are addressed and remedied – or, at a minimum, without imposition of specific, enforceable conditions with explicit deadlines – then SBC’s local service markets may never become irreversibly open to competition.

## **II. EXCEPTIONS TO THE PROPOSED ORDER’S CONCLUSIONS ON “BILLING” (SECTION III.B.9.h, PARAGRAPHS 1320-1333)**

### **A. The Importance of Accurate and Timely Wholesale Billing to Section 271 Checklist Compliance**

Competitive checklist item 2 in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (47 U.S.C. §271(c)(2)(B)) requires that SBC Illinois provide “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).” As the PO recognizes, access to the incumbent local exchange carrier’s (“ILEC”) OSS is one of the key elements of compliance with



checklist item 2. (PO, par. 345) The OSS, in turn, is generally considered to encompass the functions of pre-ordering, ordering, provisioning, billing and maintenance and repair.

The FCC has stated, in the context of ruling on a Section 271 application, that an ILEC seeking Section 271 authority “must demonstrate that it can produce a readable, auditable, and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2.”<sup>2</sup> The FCC stated that CLECs need readable, accurate and auditable wholesale bills for a number of reasons:

First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC. Accurate and timely wholesale bills in both retail and BOS BDT formats thus represent a crucial component of OSS.<sup>3</sup>

Thus, a demonstration by SBC Illinois that it is able to issue accurate and timely wholesale bills to its CLEC customers on a consistent and reliable basis is essential to a finding of compliance with competitive checklist item 2 and to a positive Section 271 recommendation from this Commission.

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<sup>2</sup>*Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania* (Sept. 19, 2001) (“*Verizon Pennsylvania Order*”), par. 22.

<sup>3</sup>*Verizon Pennsylvania Order*, par. 23 (citations omitted).

**B. The Proposed Order's Conclusion on Wholesale Billing**

The Phase 2 record is replete with evidence of SBC Illinois' inability to consistently and reliably issue accurate wholesale bills to its CLEC customers. However, although identifying three specific areas of wholesale billing in which corrective actions or improvement are required (described below), the PO concludes that it "fails to find any Section 271 compliance problems" (PO, par. 1326), and that SBC Illinois is Section 271-compliant with respect to the billing function.<sup>4</sup> (PO, par. 1326, 1333)

The PO does find that the record shows SBC Illinois has experienced serious problems in accurately billing CLECs for UNE-P, which must be corrected; and that SBC must improve the "contract management processes" associated with updating rate tables and interconnection agreements to cover events where the Commission orders changes to SBC's UNE rates.<sup>5</sup> (PO, par. 1321-23, 1325) The PO also directs SBC Illinois to implement in Illinois the "Bill Auditability and Dispute Resolution Plan" ("BADRP"), which was required by the Michigan Public Service Commission ("MPSC")

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<sup>4</sup>The concluding paragraph (1333) in this section of the PO states: "With this additional effort and commitment by the Company, the Commission believes that the CLECs concerns will be satisfied. It further leaves the Commission able to find that, on the totality of the facts and circumstances, SBC Illinois is benefit of Section 271 approval on this function." The last sentence is probably not exactly what the ALJ intended to say, but we infer it as an attempt to conclude that SBC Illinois satisfies checklist item 2 with respect to the billing function.

<sup>5</sup>TDS Metrocom does not use the SBC UNE-P, but rather serves retail customers using its own switching facilities and unbundled local loops leased from SBC. McLeodUSA makes limited use of UNE-P.

for SBC Michigan.<sup>6</sup> (PO, par. 1328) Finally, the PO directs SBC Illinois (i) to identify steps it will take to rectify its unsatisfactory performance with respect to Performance Measure (“PM”) 17 – Billing Timeliness, (ii) to implement that corrective action plan and (iii) to “demonstrate substantially improved performance six months hence.” (PO, par. 1330) Each of these findings and conclusions is appropriate, but they do not go far enough in addressing SBC’s wholesale billing problems that were manifested on this record. Rather, the Commission should not conclude that SBC Illinois is entitled to a positive Section 271 recommendation until SBC demonstrates that its wholesale billing problems have been remedied (or that a detailed corrective action plan is in place) through adoption and implementation of a comprehensive wholesale billing system rehabilitation plan.

**C.     The Phase 2 Record Demonstrates that SBC Illinois’ Wholesale Bills Are Replete With Errors That Apparently Result from Myriad Problems in SBC Systems Affecting Billing**

The Phase 2 record demonstrates that SBC Illinois has ***not*** established the ability to issue accurate and timely wholesale bills to its CLEC customers on a consistent and reliable basis. The Proposed Order states (as indicated above) that “With respect to billing accuracy, the majority of the issues appear to be related to UNE-

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<sup>6</sup>The PO states that CLECs that did not participate in the development of the BADRP in Michigan should be allowed to submit additional recommendations for that Plan, and that SBC Illinois should file a report with the Commission stating the basis for accepting or rejecting any such recommendations, setting forth specific dates and timelines for implementing additional corrective tasks. (PO, par. 1332) There is no reason to allow only CLECs who did not participate in the MPSC proceeding to submit recommended revisions to the BADRP for adoption in Illinois. Even if it makes no other changes to the Billing section of the Proposed Order, the Commission should change paragraph 1332 to allow any CLEC to submit specific recommendations for modifications or additions to the BADRP, and to require SBC Illinois to file a report stating its basis for accepting or rejecting each such recommendation. (See Section III.G below)

P billing and involve rate changes ordered by the Commission in Docket Nos. 00-0700 and 98-0393.” (PO, par. 1321) While the record does in fact show billing problems with respect to UNE-P, it also shows wholesale billing problems in many other areas. The initial and rebuttal affidavits of Rod Cox, Manager of Carrier Relations for TDS Metrocom and formerly employed by McLeodUSA in ILEC Relations positions, attested to the serious and significant billing problems that TDS Metrocom has encountered and continues to encounter with SBC’s wholesale bills. (MTSfTDS Exs. 6.0 and 6.1) In fact, ***since TDS Metrocom began operations in 1998, it has never received an accurate bill from SBC*** (MTSfTDS Ex. 6.0, par. 6) – a fact that SBC Illinois affiants never disputed in this proceeding despite having two opportunities to do so. In addition, other CLEC affiants presented information detailing the significant problems their companies have encountered with SBC’s wholesale billing. (See WorldCom Ex. 3.3, par. 7-16; WorldCom Ex. 3.4, par. 4-17; AT&T Ex. 5.0 and Attach. 1)

Mr. Cox detailed numerous instances of erroneous wholesale billing by SBC experienced by TDS Metrocom, including failure to bill for (or under-billing of) products or services for extended periods, following by submission of substantial back bills; billing TDS Metrocom for services or products not provided, or that TDS Metrocom is not to be billed for under the parties’ interconnection agreement; double-billing; application of incorrect rates; failure to implement price changes on a timely basis; improper application of payments; and failure to provide source or back-up data to support billing adjustments. (MTSfTDS Ex. 6.0, par. 12 – 27; MTSfTDS Ex. 6.1, par. 5, 8) SBC

Illinois' affiants acknowledged the existence of most of the problems identified by Mr. Cox.<sup>7</sup> (See SBC Ex. 10.0, par. 22-26 and 29-31; SBC Ex. 10.1, par. 11-13)

The evidence presented by McLeodUSA and TDS Metrocom showed that wholesale bills issued by SBC Illinois are neither accurate nor timely. As detailed in Mr. Cox's affidavits, not only do SBC's wholesale bills consistently contain errors that must be corrected, but SBC has issued a number of significant back-billings to TDS Metrocom, covering lengthy prior periods of service. (See MTSI-TDS Ex. 6.1, pars. 4-7) It is of no value that SBC issues the bill for a billing period to the CLEC on or before the scheduled issuance date, if that bill is incomplete or inaccurate, *particularly* if months later SBC back bills the CLEC for charges that were omitted from, or inaccurately calculated on, the so-called "timely" bill. (*Id.*, par. 4) Put simply, inaccurate bills are not "timely", regardless of when they are issued.

The persistent recurrence of large back bills from SBC is particularly problematic for CLECs. SBC has issued a number of significant back billings to TDS Metrocom, covering lengthy prior periods of service. (See MTSI-TDS Ex. 6.0, par. 12, 16, 21; MTSI-TDS Ex. 6.1, par. 4 - 6) SBC's affiants specifically admitted each of these incidents, and even identified an additional back-billing covered 13 months that Mr. Cox had not described. (See SBC Ex. 10.0, pars. 29-32; SBC Ex. 10.1, par. 10-13) The issuance of large back bills covering lengthy prior periods of service indicates that SBC is not proactively monitoring its wholesale bills, and lacks an adequate validation process to insure the accuracy of the bills it issues. (MTSI-TDS Ex. 6.0, par. 9) If

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<sup>7</sup>Mr. Cox noted that although the specific examples he provided were problems experienced by TDS Metrocom, those examples are, in the aggregate, representative of similar problems he encountered with SBC's wholesale billing while he was employed by McLeodUSA. (MTSI-TDS Ex. 6.0, par. 29)

SBC's systems and processes were reliable and produced "accurate" wholesale bills, there would be no need for frequent back billings because the wholesale bills would be correct when first issued. Further, if SBC had a competent process for reviewing and auditing its own bills, then if any errors did occur, they would not go undetected for a year or more before SBC discovered the error and issued a back bill, as has occurred on several occasions with TDS Metrocom. (MTSI-TDS Ex. 6.1, par. 6)

Where wholesale charges from SBC can be billed by a CLEC directly to its retail customers, the receipt of an inaccurate bill from SBC followed many months later by a back-bill for additional charges means any opportunity to recover the wholesale charges from the CLEC's retail customers is lost – either as a matter of customer relations in a competitive marketplace, or because some of the end users who were customers of the CLEC during the period in question are no longer its customers. Even where the back-billed charges are ones that would not have been billed directly to CLEC retail customers, the receipt of large back bills many months after the fact results in a mismatch of revenues and related costs for the CLEC across accounting and reporting periods, and wreaks havoc with financial plans and budgets. (MTSI-TDS Ex. 6.1, par. 7) Finally, to compound the problem of back-billings, the record shows that in issuing back bills, SBC typically provides no source data to justify the claimed additional charges. Without such source information it is impossible for the CLEC to audit and verify the back-billed charges on SBC's invoice. Experience shows that attempting to acquire the necessary back-up information from SBC so that the back-billed charges can be audited and verified, or disputed, is a cumbersome and time-consuming process. In effect, SBC places the burden on the CLEC to determine the basis for the

back billing and dispute it if necessary, rather than explaining and justifying its back billings when submitted, as it should. (MTSI-TDS Ex. 6.1, par. 8)

SBC's frequent billing errors are an impediment to sustained competition in the local service markets. The need to deal with the frequent errors that emanate from SBC's wholesale billing function imposes a considerable cost and resource burden on CLECs – exactly the concern expressed by the FCC in the *Verizon Pennsylvania Order* quoted earlier in this brief. CLECs must expend considerable resources to review and audit SBC's incorrect wholesale bills and dispute questionable or erroneous charges. (MTSI-TDS Ex. 6.1, par. 9) For example, in response to the repeated wholesale billing errors it has encountered (and the resultant loss of confidence in the reliability of SBC's wholesale bills that this experience has engendered), TDS Metrocom formed a dedicated billing team comprised of five employees who spend an estimated 30% of their time reviewing SBC bills and disputing billing inaccuracies and improper charges. (MTSI-TDS Ex. 6.0, par. 10) One employee who was hired for other purposes spends at least 75% of his time on billing issues. (*Id.*) TDS Metrocom devotes more than 50 employee-hours every week to reviewing, correcting and disputing SBC's invoices. (*Id.*, par. 8) Thus, reviewing and disputing SBC's billing errors imposes a significant administrative burden on TDS Metrocom, and requires it to commit an unreasonable level of resources to reviewing the accuracy of the bills it receives from SBC. (*Id.*, par. 10, 28)

In fact, based on TDS Metrocom's experiences with SBC's wholesale billing, TDS Metrocom has so little confidence in the accuracy of SBC's wholesale bills that when a complete reconciliation of the bill cannot be completed prior to the due date,

TDS Metrocom finds itself compelled to delay payment, thereby incurring a late payment charge, so as to have adequate time to audit the bill. In effect, TDS Metrocom is incurring financing costs to audit and verify SBC bills that ought to be sufficiently reliable that these activities are not necessary. (MTS\TDS Ex. 6.1, par. 9)

Overall, the amount of time that CLECs such as TDS Metrocom must spend monitoring SBC's bills and disputing them is excessive and time consuming, and negatively impacts the CLECs' ability to compete with SBC. (MTS\TDS Ex. 6.0, par. 11) The drain on CLECs' resources from having to deal with SBC's billing problems gives SBC a competitive advantage. (*Id.*, par. 28)

**D. The Proposed Order Erroneously Discounts the SBC Wholesale Billing Problems Identified by McLeodUSA, TDS Metrocom and Other CLECs**

The PO, in paragraph 1326, inappropriately marginalizes the SBC billing problems identified by McLeodUSA, TDS Metrocom and other CLECs. The PO states that "The remaining billing issues, largely raised by TDS, would appear to be isolated instances", that "many . . . do not even appear to have affected CLECs in Illinois", and that "we see that most of the billing problems TDS complains of occurred in the past and have been resolved." (*Id.*) These statements fail to recognize the depth of the SBC wholesale billing dysfunction disclosed by the record.

In stating that many of the wholesale billing problems identified by TDS Metrocom "would appear to be isolated instances", it appears that the ALJ has unfortunately fallen into the trap that SBC set for her. Indeed, SBC Illinois' response to the many examples of wholesale billing problems identified by McLeodUSA, TDS Metrocom and other CLECs was to identify a purportedly unique cause for each



problem – often arising not from a “billing system” per se, but from problems in other areas of SBC’s OSS -- and to argue that these examples did not show the existence of any “systemic” problems with SBC’s wholesale billing systems. (See, e.g., SBC Ex. 10.0, par. 6, 23-26, 29-32; SBC Ex. 10.1, par. 4, 12) However, the frequency and variety of billing errors and problems experienced by the CLECs, as well as the fact that these problems emanate from problems *throughout* SBC’s OSS, demonstrated that SBC’s inability to consistently issue accurate bills, and its need for frequent error corrections and back billings, is indeed systemic.<sup>8</sup> (See MTSI-TDS Ex. 6.1, par. 3)

Moreover, from the perspective of the affected CLEC, it matters not what problems in SBC’s OSS (or what “human error”) is the cause of a billing error or results in issuance of a back bill; the impact on the affected CLEC is the same regardless of the underlying root cause. Further, the unending series of SBC wholesale billing errors, each purportedly with its own unique cause, is precisely the sort of “death by a thousand cuts” inflicted by SBC’s OSS that has made competing with SBC so difficult and frustrating for CLECs. These so-called “isolated instances” are, in the aggregate,

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<sup>8</sup>The wide-ranging causes to which SBC Illinois attributed billing errors included failure to update the Trunk Inventory Record System, incorrect categorization of loops as residential versus business, erroneous assignment of codes by the SBC Local Service Center, failure to follow established processes for setting up billing accounts, incorrect handling of inbound CNAM queries, lack of knowledge by SBC service representatives regarding error types and non-availability of reports to the service representatives, “inadvertent” omission of records from reports used for revenue settlement purposes, and of course the always popular “human error.” (SBC Ex. 10.0, par. 23, 24, 25, 26, 30, 32; SBC Ex. 10.1, par. 12) As to the latter, we observe that “human error” can result from employees not receiving adequate training, not having sufficiently clear and detailed written procedures to follow, not receiving adequate supervision, or not being exposed to sufficiently significant consequences for the commission of errors in job performance.

just as damaging to competition in SBC Illinois' local markets as the massive UNE-P billing meltdown for which the PO does require corrective action. (PO, par. 1322)

More importantly, the existence of multiple causes for the wholesale billing errors, as described in the record, shows that the principal corrective action directed by the PO – implementation in Illinois of the SBC Michigan Billing Auditability and Dispute Resolution Plan (PO, par. 1328) – will not be effective to address and eliminate these problems because it is directed *only at wholesale billing systems and processes*, and not at the myriad other causes that *SBC's own explanations* show have resulted in inaccurate and unreliable wholesale bills. What the record demonstrated is needed is a comprehensive and systematic root cause analysis that addresses not only deficiencies in SBC's wholesale "billing systems" themselves, but also problems and deficiencies in the systems and activities that generate, store and input to the "billing systems" the information needed for accurate wholesale billing. Unfortunately, the PO fails to appreciate this need. The Commission should not make the same mistake.

The PO's explanation that "most of the billing situations TDS complains of occurred in the past and have been resolved" (PO, par. 1326) does not justify the PO's dismissal of this evidence. Indeed, one wonders exactly what to make of the first clause of this statement, since *all* of the facts testified to by affiants in this case "occurred in the past." However, at least one of the serious billing problems described by Mr. Cox *occurred between the date he filed his initial affidavit and the date he filed his rebuttal affidavit*. (See MTS-TDS Ex. 6.1, par. 4 – 5) More importantly, even if each specific wholesale billing problem identified in the record were resolved, on an individual-item-by-individual-item basis as of the close of the Phase 2 record, the number, frequency,

extent and variety of SBC wholesale billing errors experienced by McLeodUSA, TDS Metrocom and other CLECs shows that CLECs, and the Commission, can have no confidence in the ability of SBC Illinois to consistently and reliably produce accurate and timely wholesale bills. As Mr. Cox explained, “[G]iven the volume of SBC billing problems experienced by TDS Metrocom and other CLECs, the fact that SBC’s affiants purport to show that SBC has fixed each specific, individual billing problem that I and other CLEC affiants have identified provides no confidence that problems with SBC’s wholesale billing systems and processes will not continue to arise.” (MTS+TDS Ex. 6.1, par. 3)

Unless a comprehensive root cause analysis and corrective action program has been undertaken, the existence of a large amount of prior errors in an activity, even if individually rectified, would lead one to expect that more errors will continue to manifest in the future. Unfortunately this simple step of logic, well-founded in normal human experience, is not taken in the PO’s evaluation of SBC Illinois’ compliance with the OSS-billing component of competitive checklist item 2.

The PO’s reliance on the fact that many of the SBC wholesale billing errors identified in the record “do not even appear to have affected CLECs in Illinois” (PO, par. 1326) is seriously misplaced. As SBC Illinois’ principal affiants on the wholesale billing issues testified, “All five SBC Midwest states utilize the same billing systems, which are managed, monitored and maintained on a region-wide basis.” (SBC Ex. 1.0, note 1) Therefore, an error that occurs in one month on a wholesale bill that a CLEC receives from SBC for UNEs or services provided in another SBC Midwest state could re-occur in a subsequent month on an SBC wholesale bill for another SBC Midwest state,

including Illinois. (MTS/TDS Ex. 6.1, note 1) Further, in light of the production and inclusion of an extensive amount of materials from the MPSC Section 271 proceedings in this record, the PO's reliance on the observation that some SBC billing errors "do not even appear to have affected CLECs in Illinois" is perplexing. In any event, that reliance should not be adopted by the Commission.

Finally, in contrast to the PO's conclusions that the many billing accuracy issues raised by CLECs in this case do not present "any Section 271 compliance problems" and "occurred in the past and have been resolved", and that there are "no current compliance issues that need to be addressed" with respect to billing (PO, par. 1326), we reiterate the statement of FCC Chairman Powell in connection with SBC's withdrawal of its Michigan Section 271 application:

Perhaps the most troubling of these issues relates to billing. Despite extensive examination of the record supporting these applications, **questions remain regarding whether SBC is *currently* providing wholesale billing functions for competitive LECs in a manner that meets the requirements of our existing precedent.** (Statement of FCC Chairman Michael Powell on Withdrawal of SBC's Application for Michigan, April 16, 2003 (emphasis added), Attachment 2 hereto).

**E. The Fact That SBC Illinois Passed Certain BearingPoint Tests of Billing-Related Performance Measures Does Not Demonstrate That SBC's Wholesale Billing is Adequate**

In support of its conclusion on the OSS-wholesale billing issue, the PO relies (although not conclusively) on the assertion that "all aspects of SBC Illinois' billing systems were thoroughly reviewed by BearingPoint and virtually all of the billing tests have been resolved satisfactorily." (PO, par. 1320) The record shows that this reliance is misplaced. As Staff, McLeodUSA and TDS Metrocom showed, the fact that SBC

Illinois has passed certain BearingPoint tests of billing-related performance measures does not demonstrate that SBC's wholesale billing is accurate and reliable.

Staff witness Nancy Weber, the Commission's project manager for the BearingPoint SBC OSS testing, categorically demonstrated that reliance on the BearingPoint test results as validating SBC's wholesale billing timeliness and accuracy would be misplaced:

As I noted in my initial affidavit, if BearingPoint's test did not reveal a deficiency with SBC Illinois' OSS it does not mean that the OSS is free of problems, deficiencies, or other impediments to proper functioning. BearingPoint's review of each evaluation criteria was conducted during defined time periods and the scope of BearingPoint's evaluation did not cover all aspects of SBC Illinois' OSS or all business processes that support its OSS. (Staff Ex. 43.0, par. 21)

[C]ontrary to SBC Illinois' statements that the billing systems, processes and procedures were the subject of a comprehensive third-party review that SBC Illinois passed with flying colors, I have to respectfully disagree. The BearingPoint review had limited coverage to the array of billing functions SBC Illinois provides. In addition, there were no bill reconciliation or dispute functions tested other than having the specific procedures reviewed and for those billing functions that were tested it took more than one full year and multiple retests for SBC Illinois to pass the BearingPoint billing tests conducted. Also, during the test period the company did not apply all rate changes, etc. that usually occur on an account to the test CLEC bills and therefore the test did not reflect the day-to-day reality of the business. Moreover, SBC's statement that BearingPoint confirmed that its wholesale bills are clear and auditable is incorrect. This was not an actual statement made by BearingPoint but an interpretation by SBC based upon the fact that BearingPoint said the bills conform to the detail and format of the BOS or industry specifications. These two statements are very different from one another. Just because a bill conforms to the detail and format of the BOS or industry specifications does not mean that a bill is clear and auditable. (Id., par. 25; citations to record omitted)<sup>9</sup>

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<sup>9</sup>It would seem extremely likely, in light of Chairman Powell's statements, that additional information, and proposed corrective actions, improvements and commitments, with respect to SBC's wholesale billing systems will be developed and submitted by SBC in connection with the refiling of its Michigan Section 271 application. The record of this proceeding should be reopened to ensure that any such information, corrective actions,

McLeodUSA-TDS Metrocom witness Mr. Cox also testified that in the area of wholesale billing, BearingPoint's test program, as well as the underlying performance measures, have not been sufficient to address and identify the deep-seated deficiencies in SBC's wholesale billing systems and processes. One reason for this outcome may have been the heavy reliance by BearingPoint, in conducting its billing accuracy testing, on transactions by the "Test CLEC" under a template interconnection agreement – the transactions used by BearingPoint to test billing accuracy may have been a fairly limited universe of sample CLEC transactions. Further, there may have been issues with transparency of the Test CLEC transactions being billed, i.e., that SBC personnel could have known that transactions being billed to the Test CLEC were in fact being billed to the Test CLEC, not to a real CLEC. (See MTSI-TDS Ex. 6.1, par. 15) As Mr. Cox detailed, many of the billing problems TDS Metrocom has encountered with SBC's billing accuracy would not have been included within the BearingPoint test cases. (See Id., par. 16, 19):

- ? The BearingPoint OSS Report specifically notes that because BearingPoint did not submit payments to SBC, no late payment charge activity appeared on bills, or could be evaluated, as a result of transaction activity generated by the Test CLEC. (Comm. Ph. 2 Ex. 1, p. 785; see Tr. 2355-56) Erroneous application of late payment charges is a continuing problem with SBC's wholesale bills. (MTSI-TDS Ex. 6.1, par. 16)
- ? The BearingPoint OSS report notes that BearingPoint did not submit claims or make payments to SBC, and therefore could not test the accuracy of SBC's application of payments. (Comm. Ph. 2 Ex. 1, p. 784; see also Tr. 2355-56) Erroneous application of CLEC payments is another continuing problem with SBC's wholesale bills. (MTSI-TDS Ex. 6.1, par. 16)

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improvements and commitments are made applicable to SBC wholesale services in Illinois as well.

- ? Accurate application of residential discounts (see MTSI-TDS Ex. 6.0, par. 15, 17) does not appear to have been tested by BearingPoint. (MTSI-TDS Ex. 6.1, par. 16(d))
- ? The BearingPoint tests would not have caught problems of double billing by SBC because BearingPoint did only snapshot tests instead of tracking billings for the same circuit over time. (MTSI-TDS Ex. 6.1, par. 16(f))
- ? The BearingPoint tests would not have caught problems of back-billing and use of incorrect rates for CNAM and 800 Database inquiries. (MTSI-TDS Ex. 6.1, par. 16(g))
- ? BearingPoint does not appear to have tested specifically for the accuracy of charges for maintenance and repair. (MTSI-TDS Ex. 6.1, par. 19)

Moreover, the SBC Illinois performance measures relating to billing are not capturing information about such wholesale billing problems as application of incorrect rates, double billing, miscoding and back billing. For example, PM 14, Billing Accuracy, measures whether CLEC and retail bills are consistent with billing tables. This is akin to measuring whether the printed receipt one receives at the grocery store matches the data in the bar code scanner that produced the printed receipt. It does nothing to assess whether the price in the scanner is correct or that it matches the posted price for the product (i.e., the tariffed rate for the UNE). (MTSI-TDS Ex. 6.0, par. 8) In this regard, the United States Department of Justice, in its Evaluation filed in the FCC docket on SBC Michigan's (now withdrawn) request for Section 271 authority, stated:

The relevant Michigan performance metrics have limited utility in measuring the correctness of bills incorrectly generated for the reasons revealed by SBC's reconciliation. The most relevant metric, MI 14, is designed to determine whether bills are correctly being calculated according to SBC's billing tables . . . Such a metric cannot, of course, show whether the underlying information about the lines themselves, for which the rates are calculated, is accurate.<sup>10</sup>

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<sup>10</sup>Evaluation of the United States Department of Justice, p. 11, filed in *In the Matter of Application by SBC Communications Inc., Michigan Bell Telephone Company, and*

Wholesale billing is one area in which “actual performance” demonstrates that the BearingPoint test results do not accurately depict the unacceptable state of SBC’s performance. The BearingPoint test results diverge considerably from TDS Metrocom’s, McLeodUSA’s and other CLECs’ real-world experience with SBC’s wholesale billing. (MTSI-TDS Ex. 6.1, par. 18) As Staff witness Ms. Weber noted, “Almost every CLEC in this proceeding who filed comments raised concerns about SBC Illinois’ billing systems and processes.” (Staff Ex. 43.0, par. 23) She concluded that “This Commission needs to be sure that the billing concerns of the CLECs are reconciled before granting a positive Section 271 recommendation” (Id., par. 27)<sup>11</sup>.

**F. SBC Illinois Should Be Required to Establish and Implement a Comprehensive Wholesale Billing System Rehabilitation Plan as a Condition to Receiving a Positive Section 271 Recommendation from this Commission**

Part of SBC’s response to the wholesale billing issues identified by TDS Metrocom, McLeodUSA and other CLECs was to indicate that it was adopting a “Bill Auditability and Dispute Resolution Plan” that SBC has submitted in the MPSC Section 271 proceeding in response to the direction of the MPSC. (See SBC Reply Comments, pp. 52-53; SBC Ex. 10.0, pars. 12-13; SBC Ex. 1.3, par. 11-17) The Proposed Order

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*Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan*, WC Docket No. 03-16 (Feb. 26, 2003).

<sup>11</sup>The last paragraph of the PO’s discussion of OSS-billing issues states that “With this additional effort and commitment by the Company [i.e., adoption of the BADRP], the Commission believes that the CLECs concerns will be satisfied.” (PO, par. 1333) McLeodUSA and TDS Metrocom wish to assure the Commission that the actions directed by the Proposed Order with respect to wholesale billing will not be sufficient to satisfy our concerns about SBC’s wholesale billing functions.



does accept SBC's commitment to implement the BADRP in Illinois and to file with the Commission progress reports concerning its actions under the BADRP. (PO, par. 1328)

However, adoption of the BADRP in Illinois is insufficient to address the billing concerns raised by CLECs in this case, because the BADRP is a wholly inadequate response to SBC's wholesale billing problems. In fact, SBC's BADRP does not even address the accuracy of SBC's wholesale bills themselves. Rather, the essence of SBC's BADRP is to provide more training to CLECs on how to read and understand their bills and on what resources to consult at SBC once a billing error is identified. Thus, the SBC BADRP proposes actions that apply only *after* SBC has sent an inaccurate bill. The BADRP does not address the underlying problems that result in inaccurate wholesale bills in the first place. Given the testimony of SBC affiants in this docket that many of the billing problems have arisen from sources other than SBC's "billing systems" themselves (see Section II.C and II.D above), the BADRP does not get to the root causes of SBC's wholesale billing deficiencies. Further, the approach reflected in SBC's BADRP continues to place the burden on CLECs to audit and verify SBC's wholesale bills and to identify errors in them, instead of focusing on fixing the root causes of erroneous billings in SBC's systems and processes. The BADRP also does nothing to address the problem of back-billing that CLECs frequently experience. (MTSI-TDS Ex. 6.1, par. 20)

In addition, the SBC BADRP does not address the billing performance measurements that have been shown to be useless in terms of capturing the problems with SBC's wholesale billing systems and processes. (See McLeodUSA and TDS Metrocom's Initial Phase 2 Comments, pp. 25-26; MTSI-TDS Ex. 6.0, par. 8; MTSI-TDS

Ex. 6.1, par. 21) Finally, to the extent that the BADRP does contemplate any corrective or improvement actions by SBC, the BADRP does not provide for third-party verification of successful implementation of those actions. (SBC Ex. 1.2, par. 12)

McLeodUSA and TDS Metrocom submit that instead, this Commission should require SBC Illinois to implement a comprehensive wholesale billing system rehabilitation plan. The wholesale billing rehabilitation plan should include comprehensive “root cause” analysis for the problems that have been manifested in SBC’s wholesale billing systems and processes. This root cause analysis should not focus on just the actual “billing systems” themselves, but should extend into all the OSS components that can result (and have resulted) in erroneous or incomplete information being fed into SBC’s wholesale billing systems, and thus in inaccurate wholesale bills. The wholesale billing rehabilitation plan should include specific corrective action items and target completion dates. It should also provide for third party review and testing of successful completion and implementation of the corrective actions. The wholesale billing rehabilitation plan should address, among other things, the adequacy of billing-related performance measures to realistically measure and depict SBC’s billing performance, and should include a collaborative process to attempt to develop more meaningful billing-related performance measures. The entire wholesale billing rehabilitation plan should be structured to provide for Commission Staff oversight and ongoing participation by and visibility to CLECs.

**G. Even if the Commission Adopts the Proposed Order's Overall Conclusion on Wholesale Billing, It Should Modify Paragraph 1332 to Allow All CLECs to Submit Proposals to Expand the Scope or Content of the Billing Auditability Plan**

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Even if (contrary to the arguments presented in this Brief) the Commission adopts the Proposed Order's conclusions on wholesale billing, the Commission should modify paragraph 1332, which states:

1332. As already indicated, SBC Illinois will put into effect, for Illinois, the Billing Auditability and Dispute Resolution Plan of record in this proceeding in the manner finalized by the Michigan Commission. *To the extent, however, that any CLEC in Illinois did not participate in the Michigan collaboratives on that Plan, SBC-Illinois will accept and further consider that CLEC's input and/or any of our Staff's proposals, on the need to expand the scope or detail of said Auditability Plan.* Further, the Company will file a report to this Commission outlining the basis for rejecting or accepting any and all of those recommendations. In that report, it will identify specific dates and timelines for implementing any new corrective tasks. (emphasis added)

There is no reason to limit the opportunity to submit suggestions for revisions to the BADRP to Staff and to CLECs that are parties to this docket but did not participate in the MPSC proceedings. Indeed, CLECs who participated in the MPSC proceedings might have the best ideas. Further, limiting the right to submit suggestions to CLECs that did not participate in the MPSC proceedings is a prescription for disputes over whether a CLEC did or did not "participate" in Michigan. Most importantly, the BADRP that is finally implemented for Illinois should be one that is a product of this proceeding and is ultimately approved by this Commission. This Commission has never been one to adopt proposals of regulated entities simply because the proposal was accepted or adopted by another Commission.

The Commission should also retain jurisdiction over finalization and implementation of the BADRP for Illinois, and should require ongoing progress reports as to implementation of the actions required by the Plan.

#### **H. Proposed Replacement Language for the Proposed Order's Conclusions on "Billing"**

##### **1. Proposed Replacement Language**

For the reasons set forth in Sections II.A through II.F above, the Proposed Order's conclusions on "Billing" at paragraphs 1320 through 1333 should be revised as follows:

1320. The Commission notes, at the outset, that while some all aspects of SBC Illinois' billing systems were thoroughly reviewed by BearingPoint and virtually all of the billing tests it did conduct have been resolved satisfactorily, the record shows that other billing problems identified by CLECs in this case would not have been covered by BearingPoint's tests. Given that the BearingPoint Master Test Plan was adopted by this very Commission, with input from Staff and the CLECs, and that the BearingPoint test process was heavily monitored by those same parties, the Commission undoubtedly and reasonably attaches substantial weight to the positive overall BearingPoint results; however, the Commission must also take into account the significant other evidence of problems and deficiencies in SBC's wholesale billing systems and processes and in the other components of SBC's OSS that are the sources of information needed to prepare accurate wholesale bills. These results, in our view, support a positive overall Section 271 conclusion with respect to billing. ~~Other~~ This evidence and concerns appear of record, ~~however,~~ and must be considered by the Commission in determining whether SBC Illinois has satisfied Checklist item 2 with respect to the Billing component of OSS ~~further improvements need be made in these premises.~~ Another concern of the Commission is that, as shown by the record, the billing-related performance measures may not be sufficient to capture the sources of the problems being experienced by CLECs with respect to SBC's wholesale billing.

1321. With respect to billing accuracy, one major issue ~~the majority of the issues appear to be related~~ relates to UNE-P billing and involves rate changes ordered by the Commission in Docket Nos. 00-0700 and 98-0393. SBC Illinois concedes that errors were made but explains that they were limited in scope and resulted to a large degree from confusion over whether CLECs were taking service under contract or tariff. While the Commission accepts these explanations, we remain concerned.

1322. The Commission firmly believes that any billing errors associated with the UNE-P must be corrected. We see that SBC Illinois already has committed to do so. As we understand it, the affected CLECs' billing tables have already been changed

where appropriate and the credit process will be handled on a CLEC-by-CLEC basis. SBC Illinois' actions in this regard are appropriate and we hereby direct the Company to report back to the Commission when the current billing situation has been rectified, both with respect to updating CLEC billing tables to ensure that charges are correct on a going forward basis, and to its issuance of credits for past errors.

1323. Information provided by SBC Illinois indicates that the UNE-P related billing errors had resulted from human error and do not reflect any systemic problems inherent in SBC Illinois' billing systems. We accept this showing but nevertheless believe that SBC Illinois needs to improve the "contract management processes" associated with updating rate tables in interconnection agreements to cover the events where this Commission orders changes to SBC Illinois' UNE rates.

1324. In this regard too, the Commission would agree with SBC Illinois that CLECs should not assume that any Commission-ordered rate changes will flow through automatically to the rates in an interconnection agreement. To be sure, the effect of a Commission order is near certain to vary CLEC by CLEC, depending on the specific terms of each individual agreement. Based on the circumstances indicated in the record of this proceeding, CLECs might need to be more diligent in reviewing their interconnection agreements to determine whether further action is required, or permitted, to update UNE rates in their contracts. Effective communication resolves problems but it requires at least two willing participants.

1325. We note SBC Illinois to outline a "five step" program by which it proposes to improve its "contract management process" on a going forward basis relative to these billing issues. Our review indicates that these steps are appropriate and will have the effect of substantially reducing the potential for errors on a going forward basis. The Commission is led to understand that certain of these steps require affirmative action by the CLECs as well. As such, the Commission strongly encourages CLECs with older agreements (particularly ones from the 1997-98 time frame) to take advantage of the process outlined by SBC Illinois, i.e., to update their agreements and eliminate gaps that have contributed to these billing issues. Important to this Commission also, is SBC Illinois' offer to file reports on a bi-monthly basis and we hereby direct the Company to outline the progress made to implement these process improvements accordingly.

1326. Numerous other significant ~~With respect to the other billing accuracy issues have been raised by the CLECs, which in the aggregate demonstrate that there are substantial problems with SBC's ability to render timely and accurate wholesale bills on a consistent basis to its CLEC customers the Commission fails to find any Section 271 compliance problems.~~ These problems include failure to bill (or under-billing of) products and services for extended periods, followed by submission of substantial back bills; billing for services or products not provided, or that the CLEC is not to be billed for; double billing; application of incorrect rates; failure to implement price changes on a timely basis; improper application of payments; and failure to provide source or back-up data to support billing adjustments. The necessity to devote resources to resolving issues created by errors and deficiencies in SBC's wholesale bills diverts CLEC resources from competitive, service-providing activities, and places CLECs at a

competitive disadvantage to SBC. The problem of frequent back-billings by SBC for extended periods, as described in this record, is a particularly serious problem that it particularly burdensome to CLECs.

1326.1 The Commission notes that billing Billing issues associated with the Line Loss Notices should be resolved by SBC, given the extensive progress made on line loss notices as developed on record and what we perceive as the Company's resolve to see this through. The remaining billing issues, largely raised by TDS, would appear to be isolated instances. Many, we are told, resulted from one-time conversion projects and many others do not even appear to have affected CLECs in Illinois. As, and even more importantly, we see that most of the billing situations TDS complains of occurred in the past and have been resolved. Overall, we find no current compliance issue that needs to be addressed. The specific causes of other specific billing problems discussed in this record may have been identified by SBC, and specific corrective actions implemented for those particular problems. However, the widespread nature of the billing problems identified leads the Commission to conclude that there are systemic problems with SBC's wholesale billing systems and processes and with other OSS components and activities that provide information to the billing systems. Further, the frequency and diversity of wholesale billing errors and problems identified in this record raise the concern that even though specific prior errors have been addressed, more problems will continue to crop up, unless a comprehensive root cause analysis and corrective action program is developed and implemented by SBC.

1327. Turning to billing auditability, the Commission is persuaded that SBC Illinois' bill formats are consistent with industry standards and that adequate resources are available to assist CLECs in understanding their bills. To this end, the Commission also relies on BearingPoint's test results that did not find any material problems with bill auditability.

1328. That said, on the whole of the record before us, the Commission believes that the Bill Auditability and Dispute Resolution Plan on record (and that is being implemented in Michigan) is likely to be of benefit to Illinois CLECs. Therefore, the Commission accepts SBC Illinois' commitment to implement the same improvements in Illinois and to file the same progress reports here that are to be filed in Michigan. However, as we explain later in these conclusions, adoption of the Billing Auditability and Dispute Resolution Plan from Michigan will not be sufficient to bring SBC into compliance with Checklist item 2 with respect to OSS-billing, or to address the myriad problems with SBC's wholesale billing that are manifest on this record.

1329. The seriousness with which we view and will treat billing concerns and issues on an on-going basis is well reflected in our remaining directives. The Commission must also take account of the fact that SBC recently withdrew its Michigan Section 271 application at the FCC due to, in part, continuing problems with the wholesale billing function. The record here shows that all five SBC Midwest companies, including SBC Illinois and SBC Michigan, use substantially the same OSS and the same wholesale billing systems. Thus it is apparent that the SBC Midwest billing systems and processes presently fall short of what is needed to satisfy checklist item 2, support local

markets that are irreversibly open to competition, and provide a basis for a favorable Section 271 recommendation to the FCC from this Commission.

~~1330. For its part, Staff reports that SBC's has been failing to satisfy billing-related performance measures with respect to billing are generally satisfactory. There is, however, one exception noted by Staff as significant, i.e., PM17 - timeliness. SBC consistently gives its affiliate more timely bills than it gives the CLECs. According to Staff, this appears to have been a persistent problem over the last year with not much improvement over that time period. As such, Staff recommends that we have SBC Illinois identify the steps that it will take to correct its unsatisfactory performance with respect to PM17 - billing timeliness, implement such plan and demonstrate substantially improved performance six months hence. This recommendation is reasonable in our view and we direct the Company to comply in all particulars.~~

~~1331. There is yet another measure we deem prudent and that the Commission here directs~~ In summary, based on this record, the Commission concludes that there have been and continue to be significant problems with SBC Illinois' wholesale billing, and that SBC has not demonstrated that it satisfies checklist item 2 with respect to the Billing component of OSS.

1332. As already indicated, SBC Illinois will put into effect, for Illinois, the Billing Auditability and Dispute Resolution Plan of record in this proceeding in the manner finalized by the Michigan Commission. To the extent, however, that any CLEC in Illinois did not participate in the Michigan collaboratives on that Plan, SBC Illinois will accept and further consider that CLEC's input and/or any of our Staff's proposals, on the need to expand the scope or detail of said Auditability Plan. Further, the Company will file a report to this Commission outlining the basis for rejecting or accepting any and all of those recommendations. In that report, it will identify specific dates and timelines for implementing any new corrective tasks. However, this Plan, by itself, is not sufficient to resolve the concerns with SBC's wholesale billing that emanate from this record. Therefore, the Commission directs SBC Illinois to develop, present and implement a comprehensive wholesale billing system rehabilitation plan. The wholesale billing rehabilitation plan should include comprehensive "root cause" analysis for the problems that have been manifested in SBC's wholesale billing systems and processes. This root cause analysis should not focus on just the actual "billing systems" themselves, but should extend into all the OSS components that can result (and have resulted) in erroneous or incomplete information being fed into SBC's wholesale billing systems, and thus in inaccurate wholesale bills. In other words, SBC must take a comprehensive and holistic approach to fixing its wholesale billing deficiencies, not the approach of "fix each problem as it arises" that SBC has heretofore employed. The wholesale billing rehabilitation plan should include specific corrective action items and target completion dates. It should also provide for third party review and testing of successful completion and implementation of corrective actions. The wholesale billing rehabilitation plan should address, among other things, the adequacy of billing-related performance measures to realistically measure and depict SBC's billing performance, and should include a collaborative process with CLECs to attempt to develop more meaningful billing-related performance measures. The entire wholesale billing rehabilitation plan

should be structured to provide for Commission Staff oversight and ongoing participation by and visibility to CLECs.

~~1333. With this additional effort and commitment by the Company, the Commission believes that the CLECs concerns will be satisfied. It further leaves the Commission able to find that, on the totality of the facts and circumstances, SBC Illinois is benefit of Section 271 approval on this function. The Commission will not at this time impose specific dates or deadlines on SBC Illinois with respect to development, submission to the Commission, and completion of implementation of the wholesale billing rehabilitation plan. However, SBC Illinois is hereby placed on notice that it will not receive a determination from this Commission that checklist item 2 has been satisfied, or a positive Section 271 recommendation to the FCC, until the wholesale billing rehabilitation plan has been submitted to and approved by the Commission, and implementation of the approved plan has either been completed, or the Commission has been satisfied that implementation is substantially and irreversibly under way.~~

**2. Alternative Replacement Language for Paragraph 1332 if the Proposed Order's Principal Conclusions on "Billing" Are Not Changed**

If, contrary to the arguments presented in Sections II.A through II.F of this Brief on Exceptions, the Proposed Order's principal conclusion on wholesale billing are not changed by the Commission, the Commission should change paragraph 1332 of the Proposed Order as shown below, for the reasons set forth in Section III.G of this Brief on Exceptions.

1332. As already indicated, SBC Illinois ~~will~~ has committed to put into effect, for Illinois, the Billing Auditability and Dispute Resolution Plan of record in this proceeding in the manner finalized by the Michigan Commission. However, for this Commission's purposes, the Billing Auditability and Dispute Resolution Plan put into effect for Illinois must satisfy this Commission and the concerns of the CLECs operating in Illinois. To the extent, however, that any CLEC in Illinois did not participate in the Michigan collaboratives on that Plan, Therefore, for a period of 45 days from the date of this Order, SBC-Illinois will accept and further consider that CLEC's input from any CLECs and/or any of our Staff's proposals, on the need to expand the scope or detail of said Auditability Plan. Further, the Company will within 30 days after the conclusion of the 45-day period file a report to this Commission outlining the basis for rejecting or accepting any and all of those recommendations. In that report, it will identify specific dates and timelines for implementing any new corrective tasks. The report shall be filed on e-docket and served on all parties to this docket. If SBC's report states that it has not accepted any CLEC or Staff proposals, or a CLEC or Staff files with this Commission, within 30 days following the filing of SBC's report, a statement to the effect that the CLEC or Staff objects to SBC's failure to accept the CLEC or Staff proposal or



the manner in which SBC proposes to implement the proposal, then the Administrative Law Judge shall within 14 days thereafter convene a status hearing and promptly develop and implement a hearing or other process for resolving such disputes and/or bringing them before the Commission for resolution.

**III. EXCEPTIONS TO THE PROPOSED ORDER'S CONCLUSIONS ON "RELIABILITY OF SBC ILLINOIS' COMMERCIAL PERFORMANCE DATA" (SECTION III.O.6, PARAGRAPHS 2901 – 2950)**

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McLeodUSA and TDS Metrocom take exception to the Proposed Order's ultimate conclusions in Section III.O.6 that "the totality of the evidence on record provides sufficient assurance as to the reliability of" SBC Illinois' performance measurement data and processes (PO, par. 2935); that "the E&Y audit, taken together with the additional assurances of reliability in the record and treated in the right light, provide sufficient assurance of reliability" (PO, par. 2936); that "BearingPoint's findings do not affect that conclusion" (*Id.*); that "E&Y's audit, together with other assurances of reliability, provides this Commission with sufficient assurance" (PO, par. 2941); and that "the Commission finds the totality of the evidence to demonstrate that SBC Illinois' commercial performance results are sufficiently reliable to enable the Commission to use them in assessing checklist compliance." (PO, par. 2947) McLeodUSA and TDS Metrocom also take exception to the PO's intermediate reasoning and conclusions supporting these ultimate conclusions, as detailed in this Section III of our brief on exceptions. The entire Section III.O.6 of the Proposed Order should be deleted and replaced with the language we provide in Section III.E below.

**A. The Proposed Order Erroneously Accepts the Ernst & Young Review as an Acceptable Substitute for Successful Completion by SBC Illinois of the Performance Metrics Review Being Conducted by this Commission's Independent Third-Party Auditor, BearingPoint**

In analyzing the reliability of SBC Illinois' commercial performance data, the Proposed Order, as it did in its analysis of SBC's wholesale billing under checklist item 2, has fallen for the diversion created by SBC. The only issue the Commission ought to be considering here is whether SBC Illinois has successfully completed the BearingPoint performance metrics verification and validation process established by this Commission some three years ago. As the Commission is well aware, and as this record shows, SBC's progress in completing the BearingPoint performance metrics testing has not been stellar. In apparent recognition of this fact, in October 2002, SBC Illinois retained Ernst & Young to conduct a review of certain aspects of SBC's performance metrics reporting. The three areas of performance metrics on which the E&Y review concentrated were the areas in which SBC Illinois stands substantially short of completing the BearingPoint performance metrics testing. (See McLeodUSA and TDS Metrocom's Brief, pp. 19-20.) Clearly, SBC was seeking to focus attention on the review conducted by its own retained consultant, E&Y, and away from the unsatisfactory results of the performance metrics review being conducted by this Commission's independent third-party auditor, BearingPoint.<sup>12</sup>

Unfortunately, SBC's tactic succeeded at the ALJ level: The "Commission Review and Conclusions" portion of the PO's section on "Reliability of SBC Illinois'

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<sup>12</sup>We note that E&Y is also SBC's outside financial auditor, an ongoing engagement that doubtless generates substantial revenues for E&Y from SBC. In addition, we are aware of no evidence that SBC conducted a competitive bidding process or similar RFP process to select an outside firm to review its performance metrics processes.

Commercial Performance Data” starts not with a discussion of where SBC Illinois stands in the BearingPoint performance metrics review, but rather with a discussion of why the E&Y review should be accepted as establishing the reliability of SBC’s performance metrics. Indeed, after an introductory paragraph, the next 19 paragraphs of the 50-paragraph “Commission Review and Conclusions” section discusses the E&Y review. The PO elevates the E&Y review to being the centerpiece of the proposed Commission conclusions on performance metrics by stating that “E&Y’s audit is sufficient for present purposes” (PO, par. 2911), and reducing the BearingPoint review to merely something from which there is some “additional value to be gleaned.” (Id.) In short, the ALJ took SBC’s bait hook, line and sinker.

It is not until the 30<sup>th</sup> paragraph of this section that the PO devotes any substantive attention to the BearingPoint performance metrics review. Worse, at that point the PO does not discuss the substantive results of the BearingPoint performance metrics review, but rather launches into a discussion intended to justify granting a favorable Section 271 recommendation for SBC Illinois despite the incomplete status of the BearingPoint review, by asserting that the FCC has not required that all performance reviews be completed before granting Section 271 authority to an ILEC. Here again, the PO’s focus is misplaced. The point of this proceeding should not be for this Commission to guess at what the FCC will find sufficient in order to grant Section 271 authority to SBC Illinois, and then shape this Commission’s conclusions and recommendations accordingly. Rather, this Commission’s objective should be to make *its own independent determination* as to whether SBC Illinois has satisfied the competitive checklist, relevant State law and public interest criteria and whether

conditions have been established to sustain SBC's local markets as *irreversibly open to competition* – and then formulate its recommendations to the FCC accordingly. This objective is particularly appropriate with respect to SBC Illinois' performance metrics processes in light of the fact that this Commission has been conducting its own review, through the independent reviewer it selected, of the adequacy of SBC Illinois' performance metrics.

The PO states that “the E&Y review is not a substitute, and is not held out to be a substitute, for the successful completion of the BearingPoint testing.” (PO, par. 2909) Contrary to this assertion, however, for purposes of this proceeding **SBC and the PO have treated the E&Y review as a substitute for successful completion of the BearingPoint performance metrics review.** Why else did SBC hire E&Y and present the results of its review, *other than to persuade the Commission to give a positive Section 271 recommendation despite SBC's failure to successfully complete the BearingPoint performance metrics review?* And that is exactly the use the Proposed Order makes of the E&Y review – it finds the E&Y review sufficient to support a positive Section 271 recommendation even though SBC **has not completed** the BearingPoint performance metrics review. (See, e.g., par. 2911, 2936, 2941)

In the remaining subsections of this Section III, we show that (i) the BearingPoint review has not established SBC Illinois' data integrity nor the reliability of its performance measurement calculation and reporting (Section III.B below); (ii) the E&Y review should not be accepted as a basis for concluding that the reliability of SBC's performance metrics has been established, or for a positive Section 271 recommendation, in lieu of successful completion of the BearingPoint performance

metrics review (Section III.C.1 below); and (iii) even the E&Y review shows serious problems with SBC Illinois' data integrity and performance measurements calculation and reporting (Sections III.C.1 and 2 below).

However, one other overview point bears emphasis: As noted earlier, this Commission imposed an expedited schedule in Phase 2 to accommodate SBC's objective of being in a position to file its Illinois Section 271 application shortly after receiving Section 271 authority from the FCC for Michigan. However, SBC's Section 271 application for Michigan has now been withdrawn at the FCC (see Attachment 1 to this Brief); and even if it is refilled soon, it would not be acted upon until late July or early August.<sup>13</sup> Correspondingly, recent information provided for this record by this Commission's BearingPoint project manager indicates that the BearingPoint performance metrics review can be completed by late July. (Staff Ex. 43.0, par. 34) Thus, there is now **no** reason (if there ever was one) for this Commission to provide a positive Section 271 recommendation for SBC Illinois until SBC has successfully completed the BearingPoint performance metrics review.<sup>14</sup>

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<sup>13</sup> Section 271(d)(3) provides for a 90-day review process at the FCC. (47 U.S.C. §271(d)(3))

<sup>14</sup> SBC's counsel asserted at a hearing on April 17, 2003 that SBC will proceed to file its Illinois Section 271 application with the FCC even if the Michigan Section 271 case has not been completed. We will be surprised if this proves to be acceptable to the FCC. Rather, we believe it is likely that FCC Staff will continue to treat Michigan as SBC Midwest's lead application, consistent with SBC's own original election to proceed first with Michigan.

**B. The BearingPoint Review Has Not Established SBC Illinois' Data Integrity nor the Reliability of its Performance Measurement Calculation and Reporting**

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**1. At This Time, SBC Illinois Stands Short of Demonstrating the Accuracy and Reliability of its Performance Metrics through Successful Completion of the BearingPoint Performance Metrics Review**

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This Commission retained BearingPoint to conduct independent testing of SBC Illinois' OSS and to review all performance measures to verify SBC Illinois' accurate and reliable compliance with its processes. The BearingPoint testing and verification processes have been open, public processes conducted under the supervision of the Commission Staff and with full opportunity for CLECs to participate. An Illinois Master Test Plan was developed (and subsequently modified) through an open process in which interested CLECs were allowed to participate along with BearingPoint and Commission Staff.<sup>15</sup> The wholesale performance measures themselves were developed among SBC Illinois and CLECs in a collaborative process pursuant to Condition 30 of the Commission's order in Docket 98-0555. On December 20, 2002, BearingPoint issued two reports on the results of its work to date: (1) a report on the operational aspects of the testing, defined as the Transaction Verification and Validation and Processes and Procedures Review (the "BP Operational Report"), and (2) a report on SBC Illinois' performance metrics (the "BP PM Report"). The two reports were admitted into the Phase 2 record as Commission Phase 2 Exhibits 1 and 2.

Successful completion of BearingPoint's testing and evaluation of SBC Illinois' performance metrics reporting is of great importance to CLECs, and should be

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<sup>15</sup> The initial Master Test Plan was issued on March 30, 2000, and an updated Master Test Plan was issued on May 2, 2002.

of great importance to this Commission. It is critically important that confidence be established, through successful independent third-party testing of SBC's performance metrics reporting, in SBC's processes and procedures for (1) collecting and storing relevant unprocessed performance data, (2) transferring unprocessed data to systems that will calculate performance measures while maintaining the integrity of the data, (3) correctly and consistently applying Commission-approved business rules to the data to calculate performance measures, and (4) reporting the resulting performance measurement results in a timely and accurate manner. Without accurate and reliable performance metrics reporting by SBC, the ability of CLECs and the Commission to monitor whether SBC's wholesale service quality performance and the functional performance of its OSS are meeting established standards will be impaired and potentially rendered ineffectual – SBC Illinois' published performance results will be meaningless if not misleading. Further, without accurate and reliable performance metrics reporting by SBC, the determination of whether and to what extent payments are to be made by SBC to CLECs and the State of Illinois under the Commission-approved performance remedy plan will be adversely impacted. In short, without accurate and reliable performance metrics reporting by SBC Illinois, actual wholesale service quality performance will be indeterminate and unknown, and the performance remedy plan will fail to achieve its intended objectives.

Unfortunately, the data available to date in this docket from the BearingPoint performance metrics review does not establish adequate confidence in the accuracy and reliability of SBC Illinois' performance metrics reporting, particularly with respect to data collection and storage, data processing, and performance metrics calculation and

reporting. BearingPoint's performance metrics review is evaluating SBC's performance metrics under five categories of criteria:

PMR 1, Data Collection and Storage Validation Verification Review: Evaluates SBC Illinois' policies and practices for collecting and storing unprocessed data that is processed through SBC Illinois' information systems, as well as processed data that is used in the creation of performance metrics and retail analogs. (Commission Phase 2 Ex. 2, p. 13)

PMR2, Metrics Definition and Standards Development and Documentation Verification and Validation Review: An assessment of SBC Illinois' policies and practices for developing, documenting, and publishing metrics definitions, standards and reports. (Id., p. 20)

PMR3, Metrics Change Management Verification and Validation Review: An assessment of SBC Illinois' overall policies and practices for managing changes to metrics and for communicating these changes to the Commission and the CLECs. (Id., p. 23)

PMR4, Metrics Data Integrity Verification and Validation Review: Evaluates the overall policies and practices for processing the data used by SBC Illinois in the production of the reported performance metrics and standards. (Id., p. 29)

PMR5, Metrics Calculations and Reporting Verification and Validation Review: An assessment of the processes used by SBC Illinois to calculate performance measurements results and retail analogs, and an assessment of consistency between the Commission-approved metrics business rules and the rules used by SBC Illinois to calculate the metrics. (Id., p. 32)

Within each of these broad categories, BearingPoint has applied numerous more detailed review criteria.

The BP PM Report reported that, overall, SBC Illinois has failed to satisfy more than two-thirds of the 303 total evaluation criteria applied by BearingPoint (see Commission Phase 2 Ex. 2, p. 8)<sup>16</sup>:

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<sup>16</sup>Following are the definitions of the four categories of results: (1) **Satisfied**: the norm, benchmark, standard and/or guideline was met or exceeded. (2) **Not Satisfied**: the norm, benchmark, standard and/or guideline was not met. (3) **Indeterminate**: insufficient evidence has been collected to determine a result. (4) **Not Applicable**: The evaluation criterion could not be evaluated. (Commission Ph. 2 Ex. 2, p. 6)



Total Number of Evaluation Criteria:	303
Satisfied:	64
Not Satisfied:	116
Indeterminate:	91
Not Applicable:	32

The results within the five PMR test families as reported in the BP PM Report are particularly unsatisfactory with respect to PMR1, PMR4 and PMR5<sup>17</sup>:

<b><u>Category</u></b>	<b><u>Satisfied</u></b>	<b><u>Not Satisfied</u></b>	<b><u>Indeterminate</u></b>	<b><u>Not Applicable</u></b>
PMR1	13	59	54	0
PMR2	3	0	0	0
PMR3 <sup>18</sup>	26	4	0	0
PMR4	2	12	26	32
PMR5	<u>20</u>	<u>41</u>	<u>11</u>	<u>0</u>
TOTALS <sup>19</sup>	<u>64</u>	<u>116</u>	<u>91</u>	<u>32</u>

We emphasize again that PMR1, PMR4 and PMR5 relate to establishing confidence in SBC's processes and procedures for performing the critical functions of data collection,

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<sup>17</sup>BP response to Staff Advance Question M1, included in Workshop Ex. 1.0.

<sup>18</sup>Total for PMR3 and PMR3B

<sup>19</sup>BearingPoint's results reported to the MPSC as of March 7, 2003, showed that, overall, 83 of the performance metrics evaluation criteria had been "Satisfied", 93 of the evaluation criteria remained "Unsatisfied", 94 of the evaluation criteria were "Indeterminate", and 32 of the evaluation criteria were "Not Applicable." In other words, this updated information provided for the record showed that as of March 7, 2003, SBC had satisfied only 31% of the performance metrics evaluation criteria, had been proven to not satisfy 34% of the evaluation criterion, and was still being evaluated on the remaining 35% of the criteria. (Staff Ex. 43.0, par. 29)

data storage, data transformation and processing, and calculation and reporting of performance results in conformance with Commission-approved business rules.

In addition to the overall incomplete status of the BearingPoint performance metrics validation with respect to PMR1, PMR4 and PMR5, a number of important BearingPoint Exceptions relating to SBC's performance metrics remained open as of the close of the Phase 2 record.<sup>20</sup> The following open Exceptions in particular are of concern to McLeodUSA and TDS Metrocom:

<b>Exception</b>	<b>Category</b>	<b>Description</b>
41	PM Change Management (PMR3)	SBC's metrics change management process does not require the identification of changes to source data systems that impact metrics reporting and the communication of those changes to relevant parties.
111	PM Calculation (PMR5; TVV7)	Timeliness measures of UNE loop repairs, excluding UNE Loop and Port combinations, are compared to retail results using dissimilar data points creating incorrect comparison results relative to the timeliness of services provided.
134	PM Calculation (PMR4)	SBC incorrectly populated the product name field in the Regulatory Reporting System (RRS). The product name is populated as "UNKNOWN" for as many as 29,662 records in the January 2002 RRS "install_hicap_subrate_detail" table. This table supports the reporting of 29 performance measures, all of which may have been affected by this error.
174	PM Calculation (PMR4)	SBC is using incorrect data in the calculation of Performance Measurement MI11 (Average Interface Outage Notification).
175	PM Calculation (PMR4)	SBC is using incorrect data in its calculation of Performance Measurements 114 (Percentage of Premature Disconnects (Coordinated Cutovers)) for the months of January through June 2002.

<sup>20</sup>As reported on BearingPoint's weekly "Ameritech OSS Test Open Exceptions Status Report" dated March 18, 2003, as posted on [www.osstesting.com](http://www.osstesting.com) (MTSI-TDS Ex. 7.0).

176	PM Calculation (PMR4)	SBC's March 2002 performance measurement data is missing daily usage feed (DUF) records used in the calculation of Performance Measurement 19 ("Daily Usage Feed Timeliness").
186	PM Data Retention (PMR1)	SBC has been unable to demonstrate that certain system-of-record and/or reporting system data have been retained in compliance with regulatory requirements.

The Proposed Order seeks to excuse the fact that SBC Illinois has not completed the BearingPoint performance metrics review, by engaging in a discussion to the effect that "Not Satisfied" does not mean failure, but only that BearingPoint needs to see more information. (PO, par. 2939) The PO also cites SBC's assertion that it has responded to "most" of BearingPoint's Observations and Exceptions, and that BearingPoint is in the process of retesting. (PO, par. 2940) McLeodUSA and TDS Metrocom do not necessarily disagree with these statements, but the fact remains (and is undisputed in the PO) that **SBC Illinois has not successfully completed the BearingPoint performance metrics review.** "Done" means "done", not "close to done" or "we promise it will get done." Contrary to the Proposed Order's conclusions, the Commission should not accept anything less than successful completion of the BearingPoint performance metrics review before it provides a positive Section 271 recommendation for SBC Illinois.

**2. Staff Has Concluded That the Reliability of SBC Illinois' Performance Measurements Has Not Been Established and That a Positive Section 271 Recommendation Is Not Warranted Until the BearingPoint Performance Metrics Review is Substantially Complete**

Commission Staff agreed with McLeodUSA's and TDS Metrocom's (and other CLECs') assessment that SBC Illinois' data integrity and the accuracy and reliability of

TDS Metrocom's performance metrics calculations and reporting have not been sufficiently demonstrated to warrant a positive Section 271 recommendation by this Commission. Staff witness Nancy Weber, the Commission's Project Manager for the BearingPoint independent third-party review of SBC Illinois' OSS and performance metrics, concluded that "SBC Illinois performance measurement data is neither accurate nor reliable and should not be used as evidence of compliance by the company with respect to the 14-point Section 271 competitive checklist." (Staff Ex. 43.0, par. 28) In her initial Phase 2 Affidavit, Ms. Weber noted that although SBC Illinois has been developing its performance measurements and reporting system for more than 2-1/2 years, "far too many inaccuracies and problems remain for the Commission to have confidence in the current and future accuracy of the performance measure data SBC Illinois reports." (Staff Ex. 31.0, par. 48) She further noted that the facts and findings presented in the BearingPoint PM Report "raise serious doubts as to the integrity and accuracy of SBC Illinois' performance measurement data and SBC Illinois' ability to produce the data". (Id., par. 53) Ms. Weber found that BearingPoint's results, as reported in its PM Report (Commission Ph. 2 Ex. 2), demonstrated specific problems with respect to PMR1 (data collection and storage), PMR4 (metrics data integrity) and PMR5 (metrics calculations and reporting):

- None of the seven PMR1 subtests have a complete set of satisfied results and two of the subtests are completely indeterminate at this time. (Staff Ex. 31.0, par. 61)
- The PMR1 data evaluation criteria are vital to SBC Illinois' performance metrics data collection and processes; if the company cannot demonstrate that it can satisfy the majority of these evaluation criteria, "the findings in BearingPoint's Metrics Report raise too many questions to trust that SBC Illinois has adequate data collection and storage practices and procedures

in place to be able to report its performance metrics data in an accurate and consistent manner.” (Id., par. 62)

- With respect to PMR4, BearingPoint was only able to determine that the performance measures in one of 18 performance measurement groupings satisfied the applicable evaluation criteria. BearingPoint found problems with eight of the performance measure groups, could not conduct the data integrity review for five other performance measure groups, and was still investigating four performance measure groups. (Id., par. 71)<sup>21</sup>
- Subsequent to publishing its December 20, 2002 PM Report, BearingPoint opened three new Exceptions and one new Observation in its review of SBC Illinois’ data integrity. (Id., par. 71)
- With respect to PMR5, BearingPoint was only able to verify that SBC Illinois satisfied the applicable evaluation criteria for one of 17 performance measure groups; the results for one other performance measure group was indeterminate, and the remaining 15 performance measurement groups each contained at least one “Not Satisfied” result under the applicable evaluation criteria. (Id., par. 76) “BearingPoint has been unable to verify that the company calculates its performance measurements correctly and in accordance with the Commission’s approved business rules.” (Id., par. 77)

Ms. Weber explained that one of the reasons it is important to have confidence in SBC Illinois’ data integrity and performance measurement calculation and reporting is that the reported performance measurement data will form the basis of the “anti-backsliding” (performance remedy) plan that will be put in place to insure that SBC Illinois continues to satisfy the requirements of Section 271 after it receives Section 271 authorization and enters the long distance market:

In order for this Commission to rely upon any performance measurement plan and anti-backsliding plan, the Commission must have confidence in the integrity and accuracy of SBC Illinois’ performance measurement data that are the inputs to these plans. In its Bell Atlantic New York 271 Order, the FCC stated that one important characteristic of any anti-backsliding plan is that there must be reasonable assurances that the BOC reported

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<sup>21</sup>As Ms. Weber noted, successful completion of the PMR4 tests is very important, since data integrity problems, such as missing data or incorrect transformation of data, may result in performance measurements being misstated. (Staff Ex. 31.0, par. 72)

performance measurement data is accurate.<sup>[22]</sup> The efficacy of these plans is seriously undermined if the inputs are unreliable. The facts presented in my affidavit regarding SBC Illinois performance measurement data clearly demonstrate that the data inputs to be used in any anti-backsliding plan, are unreliable at this time. Therefore, until SBC Illinois has proven that its performance measurement data is accurate the data cannot be relied upon by this Commission to demonstrate or ensure future compliance by the company. (Staff Ex. 31.0, par. 118)

In her Reply Affidavit, Ms. Weber, although noting that additional progress had been made in the performance metrics review, nevertheless concluded:

To conclude, while I believe progress has been made with respect to the performance measurement review since the BearingPoint report was released on December 20, 2002 as SBC has argued, I disagree with SBC's attempts to explain away the issues and believe that the cumulative effect of all of the remaining deficiencies are significant. At this time SBC is not close to completion of the BearingPoint performance metrics review and therefore the assertions of the company with respect to reliability and accuracy of its performance measurements are unsubstantiated. Therefore, at this time, I cannot conclude that the performance measurement data is accurate or reliable given the audit perspective provided by BearingPoint. (Staff Ex. 43.0, par. 33)

My recommendation remains that this Commission should not provide positive Section 271 approval until SBC can demonstrate its performance measurement data is reported accurately and reliably on a consistent basis and the BearingPoint review is substantially complete. (*Id.*, par. 35)

Ms. Weber noted that as of March 4, 2003, a total of 13 BearingPoint Exceptions and 71 BearingPoint Observations applicable to SBC Illinois' performance measurements remained open. (*Id.*, par. 33 note 16) This is far too many for the Commission to conclude that the integrity of SBC Illinois' performance measurement data and the accuracy and reliability of its performance measurement calculation and reporting has been established sufficiently to warrant Section 271 approval. This was also Staff's

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<sup>22</sup>The Bell Atlantic New York decision is *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket 99-925, FCC 99-404 (rel. Dec. 22, 1999), par. 433.

overall conclusion and recommendation with respect to SBC Illinois' performance metrics, as presented by Staff witness Jeffrey Hoagg.<sup>23</sup> (Staff Ex. 40.0, par. 7)

The Commission ought to give particularly heavy weight to Ms. Weber's analysis of the results and status of the BearingPoint performance metrics review, and of the conclusions she draws from that analysis. Ms. Weber has not simply looked at the BearingPoint results as of a point in time for the purpose of preparing testimony as a Staff member assigned to this case. Rather, as this Commission is well aware, Ms. Weber has been directly involved with and monitored the BearingPoint testing program on an ongoing basis for many months. Her analysis and conclusions warrant particular emphasis in the Commission's evaluation of whether the accuracy and reliability of SBC Illinois' performance measurement data has been sufficiently established to support a positive Section 271 recommendation, and local exchange markets that are irreversibly open to competition.

**3. This Commission Should Finish What It Started: SBC Illinois Should Not Receive a Positive Section 271 Recommendation Until it Has Successfully Completed the BearingPoint Performance Metrics Review**

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McLeodUSA and TDS Metrocom emphasize that they, and we believe many other CLECs, have placed substantial reliance on the BearingPoint independent third-party performance metrics validation process that has been conducted in an open, public manner pursuant to the Illinois Master Test Plan under the close supervision of the Commission Staff. The Commission initiated this process as an independent, open process for verifying that SBC Illinois' OSS functioned properly (as measured by agreed

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<sup>23</sup> Performance metrics is one of five major areas of deficiency that results in Staff being unable to recommend that the Commission endorse SBC Illinois' Section 271 application at this time. (Staff Ex. 40.0, par. 8)

performance measurements) and that parties dependent on the validity of SBC's data integrity and performance metrics reporting could have confidence in those functions. There simply has been no justification presented to jump the gun and prematurely endorse SBC Illinois' Section 271 application until the integrity of SBC Illinois' performance data and the accuracy and reliability of its performance measurements calculations and reporting has been established through the independent third-party review.<sup>24</sup> The Commission should not provide a positive Section 271 recommendation for SBC Illinois until the independent third-party review process the Commission initiated some three years ago to validate SBC's ability to collect, maintain and transform data and calculate and report performance measurement results has been successfully completed. The PO's conclusions to the contrary should be rejected.<sup>25</sup>

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<sup>24</sup> Although the BearingPoint results as reported on this record would seem to suggest that SBC Illinois has a long way to go to establish the accuracy and reliability of its performance measurements data, there is in fact reason to believe that the remaining BearingPoint performance measurement verification and validation can be completed reasonably expeditiously, if SBC promptly takes the actions required to implement changes to its systems and facilitate verification testing. SBC Illinois' affiant on this topic, Jim Ehr, identified numerous open items in the PMR1, PMR4 and PMR5 testing that are expected (based on plans and schedules for further testing agreed to by SBC Illinois and BearingPoint) to be completed during the second quarter of 2003. (See SBC Ex. 2.0, par. 251, 252, 253, 270, 273, 291; Workshop Ex. 3.0) In her Reply Affidavit, Ms. Weber stated that the BearingPoint performance metrics review could be completed by the end of July, 2003. (Staff Ex. 43.0, par. 34)

<sup>25</sup> The PO suggests that the reliability and accuracy of SBC's performance measurement reporting must not be so bad since prior to January 2003, no CLEC had requested SBC Illinois to perform a reconciliation of its monthly performance data. (PO, par. 2924) The PO ignores the fact of the ongoing BearingPoint performance metrics review. McLeodUSA and TDS Metrocom, and we believe other CLECs, have not expended resources to request or participate in data reconciliations for the reported performance measurements because we are relying on successful completion of the BearingPoint performance metrics review to establish the accuracy and reliability of SBC's reported performance measurement results.



**C. The Review of SBC Illinois' Performance Metrics Conducted by E&Y Is Not an Acceptable Substitute for Successful Completion of the BearingPoint Performance Metrics Validation; Moreover, the E&Y Review Also Shows Problems Remain with SBC's Data Integrity and Performance Metrics Calculation and Reporting**

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**1. The E&Y Review Was Not Conducted in an Open, Public Process, Was Subject to Scope Limitations, and Cannot Be Accepted as a Substitute for Successful Completion of the BearingPoint Performance Metrics Validation in Order to Support a Positive Section 271 Recommendation from this Commission**

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As noted in Section III.A of this Brief, although disclaiming that it was doing so, the PO inappropriately accepts the E&Y review as an acceptable substitute for successful completion of the BearingPoint review of SBC Illinois' performance metrics (which the PPO acknowledges has not occurred (PO par. 2930)) to establish the accuracy and reliability of SBC's performance measurement reporting.<sup>26</sup> This conclusion must be rejected. McLeodUSA and TDS Metrocom take exception to the PO's ultimate conclusion that "All in all . . . there is no legitimate reason to dismiss the E&Y audit or to attach any less weight to its reports" (PO, par. 2920), as well as the intermediate reasoning and conclusions supporting that ultimate conclusion. Contrary to the PO's conclusion, the record provides ample basis to dismiss the E&Y review and to attach limited if any weight to E&Y's reports.

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<sup>26</sup> The Commission should wonder why E&Y's review of performance measurement results, initiated October 2002, is "substantially complete", while BearingPoint's review, initiated by this Commission in early 2000, is not. (See PO, par. 2930) We submit that if SBC Illinois had devoted the same level of attention and cooperation to the BearingPoint testing and reviews over the last three years as it appears to have devoted to assisting and responding to E&Y over the last six months, the Bearing Point performance measurement reviews (and OSS testing) might well be done by now. This is another demonstration of why the Commission should not give SBC a favorable Section 271 recommendation until after SBC has successfully completed the BearingPoint performance metrics review.

At the outset, McLeodUSA and TDS Metrocom take strong exception to the ALJ's assertion in paragraph 2904 that the CLECs and Staff had adequate opportunity to review and test E&Y's reports and E&Y's underlying processes and bases in the course of this expedited Phase 2 proceeding ("The CLECs had ample opportunity to review E&Y's report and methodology and ask questions of E&Y personnel under oath, and they had access to E&Y's working papers.") First, we start with the observation that SBC originally filed a notice representing to the Commission and the parties that it would provide the E&Y report on or about December 20, 2002, but then failed to provide the report until January 17, 2003, thereby cutting out a month of the time the other parties expected to have to review it. (Tr. 3498)

Next, while E&Y representatives were made available for questioning at a workshop on February 12, in the same time frame the parties also had to prepare for and conduct their questioning of BearingPoint and numerous SBC witnesses.

Third, although E&Y representatives did answer some question under oath at that workshop, they were allowed, under the unusual procedures imposed on the parties in Phase 2, to defer answering many questions at that time and instead provide answers in writing. *E&Y's written answers were not verified and were not provided under oath.* (See Workshop Ex. 2.0, 2.1, 2.2, 2.3) This process also precluded the ability to ask follow-up questions, as would have been possible had E&Y been required to answer all questions under oath at a hearing.

Fourth, the CLECs **never** were given access to all of E&Y's workpapers, and a substantial portion of the workpapers that were ultimately made available – after some two weeks of argument that served mainly to divert CLEC and Staff resources from

being able to prepare for other aspects of this expedited proceeding -- were not provided until **after** the workshop at which E&Y was made available for questioning.<sup>27</sup>

Fifth, significant E&Y materials – such as E&Y’s affidavit before the FCC relied on by the Proposed Order to support its conclusions in paragraph 2911 – were not provided until the rebuttal and surrebuttal rounds of Phase 2, after the workshop at which E&Y was made available for questioning, so that there was **no** opportunity to question E&Y on, or obtain workpapers supporting, these subsequently-filed E&Y documents.

In any event, even putting aside the lack of adequate opportunity to take discovery from, and cross-examine, E&Y in this proceeding, there are numerous other factors that compel the conclusion that the Commission should give the E&Y reports no weight, and that it certainly should **not** accept them as establishing the reliability and accuracy of SBC’s performance metrics, or as supporting a conclusion that SBC is ready for Section 271 authorization, in the absence of successful completion of the BearingPoint performance metrics review. **First**, there is simply no reason for the Commission to utilize the results of a review conducted by a consultant, E&Y, that was selected solely by the auditee, SBC Illinois, without any input from this Commission (or

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<sup>27</sup>Although time and resource constraints did not allow McLeodUSA and TDS Metrocom to formally dispute the claims of confidentiality for the E&Y workpapers that were the basis for the extended delay in allowing CLECs and Staff access to them, we did not find much that was legitimately confidential in the workpapers ultimately produced. In fact, while SBC asserted that the workpapers were confidential documents of E&Y, it appears that E&Y’s principal basis for claiming the workpapers to be confidential was that they contained information provided to E&Y by its client, SBC. Thus, the confidentiality claims appear to have been just a dance orchestrated by SBC to keep the E&Y workpapers away from Staff and CLECs, or delay their production, with SBC and E&Y each claiming the workpapers contained confidential information of the other.

apparently, from any other state commission), rather than the results of the review conducted by the auditor that this Commission selected.

**Second**, in contrast to the open, public process through which the BearingPoint reviews have been conducted, under the supervision of the Commission Staff, the E&Y reviews were conducted through a closed, private process between E&Y and SBC. Other than one meeting with several Commission Staff representatives in November 2002, E&Y did not during the course of its work meet with the Staff of this Commission, the staffs of other commissions, or CLECs to discuss its review. (Workshop Ex. 2.2 (E&Y Response to Staff Question 22)) Upon identifying an “Issue” in the course of its review, E&Y did not post the Issue on a website or other publicly-accessible forum, the way BearingPoint posted all of its Observations and Exceptions on the OSS testing website. Nor did E&Y notify the Commission Staff, the staff of any other commission, or CLECs of the identification of an Issue. (Tr. 3476-77) Nor did E&Y meet with Commission Staff or CLEC representatives to discuss any of the responses E&Y received from SBC on Issues E&Y identified. (Tr. 3346) Nor did E&Y track the resolution of its Issues in a publicly-accessible forum, the way BP has done on the OSS testing website. Rather, E&Y simply obtained SBC’s response to or position on the Issues, and determined the disposition of the Issues based on its evaluation of SBC’s responses. In fact, in stark contrast to the BearingPoint process, **the identification and existence by E&Y in the course of its review of “Issues” that were not ultimately reported as “Exceptions” or “Interpretations” in its reports was never even disclosed in its reports.** (Tr. 3478)

McLeodUSA and TDS Metrocom do not wish to burden the Commission by making this brief on exceptions another “proprietary” document so as to protect the alleged confidentiality of the E&Y workpapers. Instead, we respectfully refer the Commission to pages 21-23 of our Phase 2 brief where we describe how E&Y’s confidential workpapers reveal that scores of “Issues” identified by E&Y personnel during the course of their performance metrics review were disposed of by E&Y on the basis of explanations provided to E&Y (and only to E&Y) by SBC management, and thus were never disclosed in E&Y’s reports. (See also the Initial Phase 2 Comments of McLeodUSA and TDS Metrocom, pp. 16-18 (Proprietary version)) Further, as shown in the referenced documents, the apparent consequences of the “Issues” identified but not reported by E&Y were not insignificant, and they impacted multiple performance measures.<sup>28</sup> The point to be made here is that these “Issues”, originally identified by E&Y audit personnel, were disposed of, and thus were not publicly reported, solely on the basis of explanations provided by SBC to E&Y, without any disclosure to or participation by Staff, CLECs or other interested parties.

**Third**, E&Y applied a threshold for “materiality” to the Issues it identified that had to be crossed before an Issue would be classified as an Exception and included in E&Y’s published reports. The “materiality” standard was that the Issue had to result in a reported performance measure result for a month being either (i) changed by more than 5%, or (ii) changed from “pass” to “fail” or vice versa with respect to meeting the applicable parity or benchmark standard for the month. (See SBC Ex. 2.0, Attach. N, p.

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<sup>28</sup>As described in the referenced documents, the principal E&Y workpaper supporting these conclusions was a secret “Master Issues List” maintained by E&Y. This document (EY3 – EY66) has been filed on e-docket on a proprietary basis as Workshop Exhibit 4.0.

6 and Attach. P, p. 1) The obvious problem with this “materiality” standard, of course, is that although an error or deficiency in collecting and storing data or calculating a performance measure may have had an “immaterial” impact in the three months that E&Y examined, the same error or deficiency could have a “material” impact in another month. Such an impact could occur, for example, if SBC had failed to include, in a performance measure calculation, data for certain types of orders or transactions that had low volumes in the months examined by E&Y, but much higher volumes in subsequent months due to growth in use of the product. Perhaps more significantly, E&Y applied its “materiality” test on a performance measure-by-performance measure basis to each Issue, even though many of the Issues it identified impacted multiple performance measures (see the “PM#” column of the Master Issues List (Workshop Ex. 4.0)); and where a performance measure was impacted by multiple Issues, E&Y did not evaluate the cumulative impact on the reported performance measure of all Issues that impacted that performance measure, because “this was not within the scope of our engagement.”<sup>29</sup> (Tr. 3370-71; Workshop Ex. 2.2 (E&Y Response to Staff Question 42))

**Fourth**, E&Y did not submit its own transactions (orders) to SBC’s OSS during the course of its evaluation. (Workshop Ex. 2.2 (E&Y Response to Staff Question 13)) This omission deprived E&Y of the ability to compare data it submitted in an order or other transaction to SBC’s OSS with the data as captured, stored and transformed by SBC. Obviously, the ability of SBC’s systems to accurately receive, record and pass to other systems the information received from customers in orders and other transactions

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<sup>29</sup> Each of the 113 performance measure that was impacted by an E&Y Exception was impacted on average by a total of 3.7 Exceptions. (Workshop Ex. 2.2 (E&Y Response to Staff Question 40))

is a critical step in accurate and reliable performance measurements results reporting. In contrast, this Commission's independent auditor, BearingPoint, established a "Test CLEC" that submitted actual transactions to SBC. (See Commission Phase 2 Ex. 1, p. 6) This process gave BearingPoint a vehicle to, among other things, test SBC Illinois' data integrity by comparing data submitted by the Test CLEC into SBC's OSS to the data as recorded, stored and transformed by SBC's systems.

The PO dismisses this deficiency in the E&Y process by stating that even though E&Y did not submit Test CLEC transactions for testing, BearingPoint is doing so. (PO, par. 2907) But this is precisely one of the reasons that the Commission should not accept the E&Y review as a substitute for successful completion of the BearingPoint performance metrics review, but rather should insist on successful completion of the latter by SBC before providing a positive Section 271 recommendation to the FCC.

***Fifth***, there appear to have been other scope limitations on E&Y's engagement that do not apply to BearingPoint's performance metrics review, as well as other differences in process and approach between BearingPoint and E&Y. Some of these differences have been noted earlier. Others are manifested in a "BearingPoint Exceptions and Observations Review" that E&Y conducted. (Workshop Ex. 5.0) Some of these scope limitations, which are reflected in E&Y documents claimed to be confidential, are described in proprietary portions of the Initial Phase 2 Comments of McLeodUSA and TDS Metrocom (pp. 20-21) and the Phase 2 Brief of McLeodUSA and TDS Metrocom (p. 25). Suffice it to say that some of the scope limitations would seem to have gone to the heart of the performance metric components that E&Y was supposedly reviewing.

## **2. The E&Y Review Disclosed Serious Problems with SBC Illinois' Data Integrity and Performance Measurements Calculation and Reporting**

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Remarkably – even with all the shortcuts, scope limitations and other questionable aspects of the E&Y review noted above – E&Y's review **did not** provide substantiation of the reliability and accuracy of SBC Illinois' performance metrics. To the contrary, E&Y's reviews disclosed serious concerns about SBC Illinois' data integrity and performance measurement calculation and reporting:

- ? E&Y reported 128 Exceptions, or “instances of material noncompliance with the Business Rules during the Evaluation Period”. (SBC Ex. 2.0, Attach. O, p.1) These 128 Exceptions affected one or more of 113 of the overall 150 performance measures (approximately 75%). (Workshop Ex. 2.2 (E&Y Response to Staff Question 40))
- ? Of the 128 Exceptions, 53 resulted in restatement of data by SBC for the March through May, 2002 period. (SBC Ex. 2.0, Attach. Q, pp. 1-10)
- ? For another 51 Exceptions, which collectively affected one or more of 72 of the overall 150 performance measures, SBC did not restate data; yet E&Y did not determine why SBC did not restate data in response to these Exceptions. (Id., pp. 11-12; Workshop Ex. 2.2 (E&Y Response to Staff Questions 33-34))
- ? For another seven Exceptions, SBC Illinois planned to take no corrective action. (SBC Ex. 2.0, Attach. Q, pp. 25-27)
- ? Fifteen additional Exceptions were reportedly in the process of being corrected as of the date of E&Y's report (January 17, 2003, see Id., pp. 28-32)), but at the time of its workshop appearance on February 12, 2003, E&Y had no further information to provide on the status of these Exceptions. (Tr. 3497-98)
- ? E&Y also found that results for 108 performance measures had to be restated by SBC with respect to the months covered by E&Y's evaluation. (Workshop Ex. 2.2 (E&Y Response to Staff Question 24))
- ? One of E&Y's reports to SBC management concluded that “Our examination disclosed that certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer program code and modifications, did not



include certain controls to ensure the accuracy of the reported performance measurements.” (SBC Ex. 2.0, Attach. S)

- ? A confidential E&Y report (which was not submitted into evidence by SBC until CLECs discovered it and demanded that it be placed into the record) makes a damning and categorical conclusion about the effectiveness of SBC’s controls over the reporting of complete and accurate performance measurement data. (Workshop Ex. 5.0 (E&Y documents EY3327); see Phase 2 Brief of McLeodUSA and TDS Metrocom (proprietary version), p. 28)

The Proposed Order appears to dismiss these deficiencies because many of the individual E&Y “Exceptions” either were fixed by SBC Illinois, or SBC represented that they would be fixed. (See PO, par. 2912) However, the Proposed Order here makes the same analytical mistake that it made with respect to wholesale billing – it focuses only on whether individual deficiencies were specifically fixed, and ignores the broader questions of whether these individual deficiencies show a systemic pattern of problems in SBC’s performance metrics processes, as well as a likelihood of recurrence.

One of the most troubling aspects of SBC Illinois’ calculation and reporting of performance metrics was revealed through E&Y’s identification of what it called “Interpretations”, i.e., instances in which E&Y found that SBC’s calculation of a performance measure was based on an interpretation by SBC of a business rule that E&Y concluded did not appear in the business rule. E&Y reported a total of 50 such “Interpretations.” These 50 “Interpretations” affected 94 different performance measures that SBC Illinois had employed in calculating performance measurement results. (See SBC Ex. 2.0, Attach. R) E&Y noted with respect to many (at least 36) of these Interpretations that in the recently-completed Six-Month Review Performance Measurements Collaborative, SBC and the other collaborative participants reached agreement on changes to the applicable business rules, which had been previously

approved by the Commission, to bring those published business rules into conformity with the way in which SBC had been interpreting them. (Id.) The revisions to the business rules to conform them to the “Interpretations” SBC Illinois had been applying were then submitted to the Commission for approval. The generic problem this sequence of events discloses, of course, is that SBC Illinois was applying its own interpretations of the published business rules before getting CLECs’ agreement to the interpretation or to a modification to the applicable business rules, and before filing revised business rules incorporating the interpretation with this Commission for its approval. Further, the sheer number of interpretations used by SBC Illinois is a cause for concern with respect to both the reliability of its reported performance measurement data, and the adequacy of its performance measurement change management processes.

The Proposed Order dismisses the “Interpretations” uncovered by E&Y as a source of concern, on the grounds that (1) E&Y performed properly in identifying these “Interpretations” in its report, and (2) CLECs have agreed to changes to many of the affected business rules to bring them into conformity with SBC’s interpretations. (PO, para. 2917-2919) Again, the PO misses the big picture. The ongoing concern that arises from the disclosure of these Interpretations is not that these particular issues are being fixed, but the pattern of behavior by SBC Illinois it reveals – to base calculation and reporting of performance measurement results on “interpretations” of the

Commission-approved business rules that depart from the language of the business rules, without disclosing the use of these interpretations to CLECs or the Commission.<sup>30</sup>

**3. If the Commission Does Not Believe the CLECs, It Can Take Staff's Word for it – the E&Y Report Constitutes Strong Evidence that SBC Illinois' Performance Measurement Data is Unreliable**

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Staff witness Nancy Weber also concluded that the findings in the E&Y report presented strong evidence that SBC Illinois' performance measurement data is unreliable. (Staff Ex. 33.0, par. 83) For example, with respect to E&Y's "Category I" Exceptions (those for which SBC corrected the Exception and restated the March, April and May 2002 data that E&Y had reviewed), Ms. Weber noted that E&Y provided no assurance that the data months beyond May 2002 – including the data for the months of September through October, 2002, that SBC submitted as its three months of performance data in this proceeding – no longer contain the data inaccuracies raised by the Category I Exceptions. (*Id.*, par. 92) In addition, Ms. Weber noted that E&Y identified 51 "Category II" Exceptions (i.e., Exceptions for which the March-May 2002 data was not corrected), which affected 60 of the 127 overall parity and benchmark performance measures. (*Id.*, par. 93) She stated that "[t]he inaccuracies in the March-May 2002 performance measurement data go right to the heart of SBC Illinois' data accuracy and reliability problems, *and are predictors of possible future problems, if not*

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<sup>30</sup>The PO also asserts that the FCC tolerates the practice of unilateral ILEC interpretations of the business rules that define performance measurements and how they are to be calculated. (PO, par. 2916) While this assertion seems dubious, the more important point, again, is that the objective of this proceeding should not be for the Commission to guess at what the FCC would conclude based on this record, but rather for the Commission to make its own independent determination as to whether the record facts show SBC's local market are irreversibly open to competition – and if not, what additional actions should be required of SBC to achieve that objective.

*addressed.”* (Id., par. 94; emphasis added) Again, she pointed out that E&Y stated that it can provide no assurance that these Exceptions do not exist in data months after the months E&Y completed its validation; therefore, some of these Exceptions may be present in the three months of results for September-November 2002 that SBC Illinois has presented in this proceeding as evidence of its compliance with the Section 271 competitive checklist. (Id.) The same is true of the “Category III” Exceptions reported by E&Y (i.e., those for which the Exception was corrected but data has not yet been reported or restated). (Id., par. 95)

Staff, like the CLECs, also focused on the SBC “Interpretations” of business rules disclosed by E&Y’s review as an area of serious concern. As Ms. Weber described it:

Interpretations are the definitional liberties that SBC Illinois has taken with specific performance measure business rule documents. Interpretations that SBC Illinois has chosen to apply to the business rules may not be the same as Staff, Commission or CLECs might apply in its own reading of the business rules and therefore ambiguity in what the performance measure actually reports may be in question. *Given the E&Y reported interpretations, SBC Illinois has not reported its performance results in compliance with the business rules for the performance measures at issue during the E&Y evaluation period [March-May 2002] or for the September-November 2002 data submitted by the company as evidence of compliance with Section 271 in this proceeding.* (Staff Ex. 31.0, par. 99; emphasis added)

Ms. Weber noted that the 50 business rule Interpretations reported by E&Y applied to 94 separate performance measures, or 63% of the performance measures that SBC Illinois reports; and that on average three different Interpretations impacted each of the 94 affected performance measures. (ICC Ex. 31.0, par. 101-102) She noted that SBC Illinois subsequently obtained agreement from CLECs, in the most recent six-month collaborative, to changes in business rules relating to 32 of the E&Y Interpretations in order to bring the business rule into conformance with SBC’s

interpretation; SBC Illinois thereafter filed the revised business rules with the Commission for approval. (Id., par. 103) Ms. Weber pointed out the obvious concern with SBC Illinois' reliance, in calculating its performance measurement results, on "interpretations" that were so significant that upon the Interpretations being cited by E&Y, SBC concluded that Commission-approved changes to the business rules were necessary. (Id.) The end result, as Ms. Weber concluded, is that "SBC Illinois has not reported its performance results in compliance with the business rules for the performance measures at issue during the E&Y evaluation period or for the September-November 2003 data submitted by the company as evidence of compliance to the 271 checklist in this proceeding" (Id.)

Finally, Ms. Weber noted that during E&Y's verification work to ensure that Exceptions it had cited had been corrected as asserted by SBC Illinois, E&Y in fact found instances in which the corrective action *was not* fully implemented, or implemented as intended. (Staff Ex. 31.0, par. 110) She stated that if SBC Illinois' controls were solid and working effectively, these types of errors should not occur. (Id.) She concluded:

I am not convinced – nor should this Commission be convinced – that SBC Illinois has addressed its performance measurement reporting control deficiencies, until SBC Illinois can consistently report its performance measures with accuracy and integrity on a monthly basis and an independent third party provides verification of this fact. Restatements to correct errors six months after posting data should not be deemed acceptable. It is my opinion that the company should restate results if they find inaccuracies, as the company has done; however, I also believe the frequency of restatements and the timing of restatements, well after initially posting performance measure data, point to an inherent problem with SBC Illinois' process controls within its performance metrics organization. (Staff Ex. 31.0, par. 109; emphasis in original)

Ms. Weber's overall conclusion in her initial affidavit was that "E&Y's findings lead to my conclusion that problems remain with SBC Illinois' reported performance measurement data and that the data submitted by SBC Illinois as evidence of its Section 271 compliance is not accurate nor reliable." (Id., par. 110)

In her reply affidavit, Ms. Weber indicated that information provided in SBC Illinois' responsive affidavits did not change her conclusion that the E&Y reviews showed that problems existed with respect to SBC's performance measurement data. In support of her observation that SBC Illinois had not demonstrated that the problems found by E&Y in the March-May 2002 performance data did not continue in subsequent months, she noted that BearingPoint's review of the July and August 2002 data months found data reporting inaccuracies for the same performance measures for which E&Y found problems in certain of its "Category I" and "Category II" Exceptions. (Staff Ex. 43.0, par. 37) She also noted that E&Y had identified 15 "Category V" Exceptions affecting 44 different performance measures (29% of the total performance measures) for which SBC had not yet implemented any corrective action. She stated that given the definition of "materiality" employed by E&Y, there is no way to know whether these uncorrected Exceptions affect SBC's Section 271 checklist compliance. (Id., par. 38) She stated that it is clear that seven of the 15 "Category V" Exceptions remain in the performance measurement data being posted by SBC Illinois, and that there is no evidence that the other eight "Category V" Exceptions do not remain in the current performance measurement data. (Id., par. 40) She concluded that "these failings undermine the ability of any party to properly evaluate SBC Illinois' performance

measurement data submitted in this proceeding for the affected performance measures.” (Id.)

Further, Ms. Weber stated in her reply affidavit that while there was some evidence that SBC Illinois’ performance measurement system controls had been improved since SBC received E&Y’s reports, the efficacy and adequacy of such improvements are not clear. (ICC Ex. 43.0, par. 41) She reiterated her initial conclusions that the Commission should not be convinced that SBC Illinois has addressed its performance measurement reporting control deficiencies until SBC can consistently report performance measures with accuracy and integrity on a monthly basis and an independent third party provides verification of this fact; that restatements to correct errors six months after posting the affected data are not acceptable; and that “[t]he frequency of SBC Illinois’ data restatements and the timing of the restatements, well after initial posting of the performance measurement data, point to the fact that inherent problems with SBC Illinois’ process controls within its performance metrics organization have existed and may continue to exist.” (Id.) She also reiterated that as a result of the accuracy and reliability problems with SBC Illinois’ reported performance measurement data, a valid assessment of the three months of performance measurement data submitted by SBC Illinois as evidence of its compliance with the Section 271 checklist could not be performed. (Id., par. 46)

The Proposed Order’s conclusion that essentially all the problems identified by E&Y have been resolved (PO, par. 2912) is at sharp variance with Staff’s conclusions. In fact, Staff’s testimony is essentially ignored in the Proposed Order’s analysis and conclusions on the performance measurements issue.

**D. Conclusion on the Reliability and Accuracy of SBC Illinois' Performance Measurements Data and Reporting**

The Phase 2 record demonstrated that multiple problems and unresolved issues remain with SBC Illinois' processes for collecting, storing and maintaining performance measurement data and for calculating and reporting performance measurement results based on that data. Numerous BearingPoint Evaluation Criteria remain "Not Satisfied" or "Indeterminate", particularly with respect to PMR1, PMR4 and PMR5, and several important performance measurement-related BearingPoint Exceptions remain open. Further, the SBC-procured E&Y analysis, although it cannot be considered a substitute for any portion of the BearingPoint performance metrics evaluation, nonetheless also uncovered numerous problems with SBC Illinois' data integrity and performance measurement calculation and reporting processes. In addition, SBC Illinois' penchant for applying "interpretations" to the Commission-approved business rules in calculating performance measurement results is particularly troubling. As a result, at this time, SBC Illinois' performance measurement data cannot be relied upon to provide an accurate depiction of whether SBC's OSS is functioning properly or whether SBC Illinois is satisfying other Section 271(c)(2)(B) checklist items. Nor can SBC's performance metrics data be relied upon to provide the basis for an effective performance remedy, or "anti-backsliding", plan. These are the conclusions not only of McLeodUSA, TDS Metrocom and other CLECs, but also of the Commission Staff.

The Commission should not provide a positive Section 271 recommendation to the FCC until SBC Illinois has successfully completed the BearingPoint performance metrics validation. The Proposed Order's proposed "Commission Review and



Conclusions” with respect to SBC’s performance metrics (par. 2901-2950) must be deleted in their entirety and replaced with the language in Section III.E below.

**E. Proposed Replacement Language for the Proposed Order’s Conclusions on “Reliability of SBC Illinois’ Commercial Performance Data”**

For the reasons set forth in Sections III.A through D above, the Proposed Order’s section on “Commission Review and Conclusions” relating to “Reliability of SBC Illinois Commercial Performance Data” (paragraphs 2901-2950) should be deleted in its entirety and replaced with the following language:

Based on its review of the record relating to the reliability of SBC Illinois’ performance measurement data collection, storage, processing, calculation and reporting, the Commission is compelled to conclude that the reliability of SBC Illinois’ performance metrics has not been sufficiently established to support a positive Section 271 recommendation to the FCC, or to demonstrate that SBC has in place performance metrics processes that will support and sustain local service markets as irreversibly open to competition. The Commission emphasizes that it is critically important that confidence be established, through successful independent third-party testing of SBC’s performance metrics reporting, in SBC’s processes and procedures for (1) collecting and storing relevant unprocessed performance data, (2) transferring unprocessed data to systems that will calculate performance measures while maintaining the integrity of the data, (3) correctly and consistently applying Commission-approved business rules to the data to calculate performance measures, and (4) reporting the resulting performance measurement results in a timely and accurate manner. Without accurate and reliable performance metrics reporting by SBC, the ability of CLECs and the Commission to monitor whether SBC’s wholesale service quality performance and the functional performance of its OSS are meeting established standards will be impaired and potentially rendered ineffectual. Further, without accurate and reliable performance metrics reporting by SBC, the determination of whether and to what extent payments are to be made by SBC to CLECs and the State of Illinois under the Commission-approved performance remedy plan will be adversely impacted.

The Commission’s fundamental concern is that after some three years, SBC Illinois has not yet successfully completed the review of its performance metrics being conducted by the independent auditor retained by this Commission, BearingPoint. The record shows that at this time, SBC Illinois has failed to affirmatively satisfy a significant number of the performance metrics evaluation criteria being employed in the BearingPoint review. The BearingPoint results are particularly unsatisfactory with respect to the BearingPoint evaluation criteria in the categories of PMR1 (Data Collection and Storage), PMR4 (Metrics Data Integrity), and PMR 5 (Metrics Calculation

and Reporting). The Commission is also concerned by the number of BearingPoint Exceptions relating to performance metrics that remained open as of the close of the Phase 2 record.

The Commission places particular reliance on Staff's assessment of SBC's data integrity and of the accuracy and reliability of SBC Illinois' performance metrics calculations and reporting, based on the BearingPoint results, as providing an impartial and unbiased perspective. Staff concluded that SBC Illinois' data integrity and the accuracy and reliability of SBC Illinois' performance metrics calculations and reporting have not been sufficiently demonstrated to warrant a positive Section 271 recommendation by the Commission. Staff concluded that SBC Illinois' performance measurement data is neither accurate nor reliable and should not be used as evidence of compliance with the Section 271 competitive checklist, and that the BearingPoint results raise serious doubts as to the integrity and accuracy of SBC Illinois' performance measurement data and SBC Illinois' ability to produce the data, particularly with respect to PMR1, PMR4 and PMR5. Staff was also of the opinion that an excessive number of BearingPoint Exceptions and Observations relating to SBC Illinois' performance measurements remained open as of early March, and these were too many open items for the Commission to conclude that the integrity of SBC Illinois' performance measurement data and the accuracy and reliability of SBC's performance measurement calculation and reporting has been established sufficiently to warrant Section 271 approval. Staff has recommended that the Commission should not provide positive Section 271 approval until SBC can demonstrate its performance measurement data is reported accurately and reliably on a consistent basis and the BearingPoint review is substantially complete.

In light of the fact that SBC Illinois has yet to successfully complete the BearingPoint performance metrics review, the Commission declines to accept the Ernst & Young ("E&Y") review that was commissioned by SBC as sufficient to demonstrate the reliability and accuracy of SBC Illinois' performance metrics. The record shows that, for a number of reasons, the E&Y review of certain aspects of SBC's performance metrics is not an acceptable substitute for successful completion of the BearingPoint performance metrics validation, and does not provide a basis for a positive Section 271 recommendation to the FCC. In the circumstances of this case, the Commission finds no reason to utilize the results of a review conducted by a consultant selected solely by the auditee, SBC Illinois, without any input from the Commission, rather than the results of the review conducted by the auditor that the Commission selected.

The Commission is also concerned by the fact that the E&Y review was not conducted through an open, public process, under the supervision of the Commission Staff and with opportunity for CLECs to observe, in the manner in which the BearingPoint reviews have been conducted. The record shows that upon identifying an Issue in the course of its review, E&Y did not post the Issue on a website or other publicly-accessible forum, the way BearingPoint posted all of its Observations and Exceptions on the OSS testing website; that E&Y did not notify Staff or CLECs when it identified an Issue, that E&Y did not meet with Staff or CLEC representatives to discuss

responses E&Y received from SBC on Issues E&Y identified, and that E&Y did not track the resolution of its Issues in a publicly-accessible forum, the way BearingPoint has done on the OSS testing website. The record also shows that E&Y identified numerous issues during the course of its review which it disposed of based on input from SBC but did not identify in its reports, and which the parties only learned about through discovery. It appears that many of these issues could have had significant impacts on performance metrics, but that Staff and CLECs were not given the opportunity to review the basis on which E&Y resolved Issues, in contrast to the procedures followed in the BearingPoint review.

Another concern the Commission sees with relying on the E&Y reviews in the circumstances of this docket is the “materiality” test that E&Y applied to the Issues it identified. The record shows that E&Y’s “materiality” standard was that the Issue had to result in a reported performance measure result for a month being either (i) changed by more than 5%, or (ii) changed from “pass” to “fail” or vice versa with respect to meeting the applicable parity or benchmark standard for the month. As shown by Staff and CLECs, one problem with this “materiality” standard is that although an error or deficiency in collecting and storing data or calculating a performance measure may have had an “immaterial” impact in the three months that E&Y examined, the same error or deficiency could have a “material” impact in another month. The record also shows that E&Y only applied its “materiality” test to each Issue on a performance measure-by-performance measure basis, even though many of the Issues it identified impacted multiple performance measures; and that where a performance measure was impacted by multiple Issues, E&Y did not evaluate the cumulative impact on the reported performance measure of all Issues that impacted that performance measure.

Another concern the Commission has with relying on the E&Y reviews in the context of this case, where the BearingPoint performance metrics validation has not been successfully completed by SBC Illinois, is that E&Y did not submit its own transactions (orders) to SBC’s OSS during the course of its evaluation. The record shows that this omission deprived E&Y of the ability to compare data it submitted in an order or other transaction to SBC’s OSS with the data as captured, stored and transformed by SBC, and therefore to effectively test the ability of SBC’s systems to accurately receive, record and pass to other systems the information received from customers in orders and other transactions. The record shows that in contrast, BearingPoint established a “Test CLEC” that submitted actual transactions to SBC, which enabled BearingPoint to test SBC Illinois’ data integrity by comparing data submitted by the Test CLEC into SBC’s OSS to the data as recorded, stored and transformed by SBC’s systems.

Finally, the Commission notes that there appear to have been other scope limitations on E&Y’s engagement that do not apply to BearingPoint’s testing and evaluation work, as well as other differences in process and approach between BearingPoint and E&Y, which would make it inappropriate in the circumstances of this case to rely on the E&Y review to substantiate the reliability of SBC Illinois’ performance

metrics processes and data, where SBC Illinois has not yet successfully completed the BearingPoint performance metrics review.

The Commission also notes that the record shows that the results of the E&Y review did not in fact provide further assurance that SBC Illinois' performance measurement results are reasonable, but rather showed serious problems with SBC's data integrity and performance measurements calculation and reporting. The record shows that E&Y found 128 Exceptions, or "instances of material noncompliance with the Business Rules during the Evaluation Period", for the period it reviewed, and that these 128 Exceptions affected one or more of 113 of the overall 150 performance measures (approximately 75%). The record also shows that the E&Y Exceptions resulted in numerous restatements of data by SBC, and some of the Exceptions resulted in corrective actions by SBC, but that not all of the SBC corrective actions have been verified, and that for some Exceptions, no corrective action has yet been taken. Further, E&Y's "Controls" report to SBC management stated that "Our examination disclosed that certain processes used to generate performance measurements, primarily related to the manual collection and processing of data and computer program code and modifications, did not include certain controls to ensure the accuracy of the reported performance measurements."

Another area of concern relating to SBC Illinois' performance metrics processes that was disclosed by the E&Y review relates to SBC Illinois' use of "Interpretations" of Commission-approved business rules in calculating performance measurement results. The record shows that E&Y reported a total of 50 such "Interpretations." E&Y noted with respect to many of these Interpretations that in the recently-completed Six-Month Review Performance Measurements Collaborative, SBC and collaborative participants reached agreement on changes to the previously-approved business rules to bring the published business rules into conformity with the way in which SBC had been interpreting the business rules. The Commission, however, is concerned that SBC Illinois was applying its own interpretations of the published business rules before getting CLECs' agreement to the interpretation or to a modification to the applicable business rules, and before filing revised business rules incorporating the interpretation with the Commission for its approval. Further, the sheer number of "interpretations" found by E&Y is a concern to the Commission.

The Commission again notes that Staff, who we view as providing an impartial and unbiased opinion uninfluenced by commercial motivations, concluded that the E&Y reviews exposed concerns about the reliability of SBC's performance metrics. Staff concluded that the findings in the E&Y report presented strong evidence that SBC Illinois' performance measurement data is unreliable, and that some of the problems identified in the March – May 2002 data that E&Y reviewed may be present in the three months of results for September-November 2002 that SBC Illinois submitted as evidence of its compliance with the Section 271 competitive checklist. Staff also expressed concerns about the frequency of SBC Illinois' use of "interpretations" of Commission-approved business rules, as disclosed by the E&Y reports. Staff concluded that the Commission should not be convinced that SBC Illinois has

addressed its performance measurement reporting control deficiencies until SBC can consistently report performance measures with accuracy and integrity on a monthly basis and an independent third party provides verification of this fact; that restatements to correct errors six months after posting the affected data are not acceptable; that the frequency of SBC Illinois' data restatements and the timing of the restatements, well after initial posting of the performance measurement data, point to the fact that inherent problems with SBC Illinois' process controls within its performance metrics organization have existed and may continue to exist; and that as a result of the accuracy and reliability problems with SBC Illinois' reported performance measurement data, a valid assessment of the three months of performance measurement data submitted by SBC Illinois as evidence of its compliance with the Section 271 checklist cannot not be performed.

Because the Commission does not find the E&Y review sufficient to substantiate the reliability and accuracy of SBC Illinois' performance measurement data collection, storage, calculation and reporting processes, in light of the failure to have completed the BearingPoint performance metrics review, the Commission has no need to consider the impact of the other indicia of reliability described by SBC's affiants.

Accordingly, the Commission concludes, based on its review of the entire record relating to the reliability of SBC Illinois' performance measurements data collection, storage, calculation and reporting, as well as change management, that there are multiple problems and unresolved issues remaining with SBC Illinois' processes for collecting, storing and maintaining performance measurement data and for calculating and reporting performance measurement results based on that data. As a result, the Commission must conclude that at this time, SBC Illinois' performance measurement data cannot be relied upon to provide an accurate depiction of whether SBC's OSS is functioning properly or whether SBC Illinois is satisfying other Section 271(c)(2)(B) checklist items; and that SBC's performance metrics data cannot be relied on to provide the basis for an effective performance remedy plan. Therefore, the Commission cannot provide a positive Section 271 recommendation to the FCC until SBC Illinois has successfully completed the BearingPoint performance metrics validation.

#### IV. CONCLUSION

For the reasons set forth in this Brief on Exceptions, McLeodUSA Telecommunications Services, inc. and TDS Metrocom, LLC, respectfully request that the Commission modify the Administrative Law Judge's Proposed Final Order on Investigation in accordance with the exceptions set forth herein.

Respectfully submitted,

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